UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

S.M.S.R., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Civil Action No. _____

PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Local Civil Rule 65.1 and Federal Rule of Civil Procedure 65, Plaintiffs hereby move the Court to issue a temporary restraining order, to be followed by a preliminary injunction, enjoining the implementation and enforcement of the Rule challenged in the Complaint, entitled *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims*, 83 Fed. Reg. 55,934 (Nov. 9, 2018). Issued in connection with the President's "Proclamation Addressing Mass Migration Through the Southern Border of the United States," 83 Fed. Reg. 57,661 (Nov. 9, 2018), the Rule immediately and unlawfully renders ineligible for asylum all noncitizens who entered the United States without inspection at the southern border.

In support of this motion, Plaintiffs rely upon the attached memorandum of points and authorities and accompanying declarations. A proposed temporary restraining order is attached. Oral argument is requested, as further set forth in Plaintiffs' concurrently filed Motion for Expedited Hearing on Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

The accompany Certificate of Counsel Regarding Compliance with Local Rule 65.1 contains a description of the notice provided to Defendants regarding the instant motion and the parties' efforts to meet and confer regarding a proposed briefing schedule.

Respectfully Submitted,

December 3, 2018

HOGAN LOVELLS US LLP

By: _____

Neal K. Katyal (Bar No. 462071)
T. Clark Weymouth (Bar No. 391833)
Craig A. Hoover (Bar No. 386918)
Justin W. Bernick (Bar No. 988245)
Colleen Roh Sinzdak* (Bar No. 1015344)
Zachary W. H. Best (Bar No. 1003717)
Mitchell P. Reich* (Bar No. 1044671)
Elizabeth Hagerty (Bar No. 1022774)
Kaitlin Welborn (Bar No. 88187724)
555 Thirteenth Street NW
Washington, DC 20004
Telephone: (202) 637-5600
Facsimile: (202) 637-5910
neal.katyal@hoganlovells.com
t.weymouth@hoganlovells.com
craig.hoover@hoganlovells.com
justin.bernick@hoganlovells.com
colleen.sinzdak@hoganlovells.com
zachary.best@hoganlovells.com
mitchell.reich@hoganlovells.com
elizabeth.hagerty@hoganlovells.com
kaitlin.welborn@hoganlovells.com

Thomas P. Schmidt*
875 Third Avenue
New York, NY 10022
Telephone: (212) 918-5547
Facsimile: (212) 918-3100
thomas.schmidt@hoganlovells.com

* *pro hac vice application forthcoming*

Counsel for Plaintiffs

Manoj Govindaiah
Curtis F.J. Doebbler*
RAICES, Inc.
1305 N. Flores Street
San Antonio, TX 78212
Telephone: (210) 222-0964
Facsimile: (210) 212-4856
manoj.govindaiah@raicestexas.org
curtis.doebbler@raicestexas.org

**pro hac vice application forthcoming*

Counsel for Plaintiff Refugee and Immigrant Center for Education and Legal Services, Inc.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

The immigration laws provide that "[a]ny alien who is physically present in the United States . . . may apply for asylum," "whether or not [the alien arrived] at a designated port of arrival and . . . irrespective of such alien's status." 8 U.S.C. § 1158(a)(1). The meaning of this text is unambiguous: The Government may not deny an alien the right to seek asylum because they did not arrive "at a designated port of entry." *Id.* Yet on November 9, 2018, Defendants issued a policy that does precisely that, categorically prohibiting aliens from seeking asylum if they crossed the southern border "between the ports of entry." *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims*, 83 Fed. Reg. 55,934, 55,940 (Nov. 9, 2018). Because that policy squarely violates a congressional mandate that is central to the operation of the Nation's asylum system and to the fulfillment of its treaty commitments, it cannot stand.

And that is just one of multiple, independent statutory flaws in the Government's policy. Defendants have invoked the Attorney General's authority to impose restrictions on asylum "consistent with" the restrictions imposed by statute, 8 U.S.C. § 1158(b)(2)(C), but the challenged restrictions were in substance imposed by the President, not the Attorney General, and do not resemble any limits that Congress ever enacted. Defendants have deprived unaccompanied alien children of the specialized asylum procedures to which they are entitled by the Trafficking Victims Protection Reauthorization Act (TVPRA). And Defendants have offered no reasoned basis for their dramatic change in immigration policy, nor met the demanding burden necessary to justify dispensing with notice-and-comment procedures under the Administrative Procedure Act.

Injunctive relief is urgently warranted. If the policy remains in effect, the Individual

Plaintiffs—a refugee and her minor child fleeing devastating violence in Honduras—will face a grave risk of being removed and subjected again to death threats and gang violence at the hands of Mara Salvatrucha ("MS-13"). Plaintiffs Capital Area Immigrants' Rights Coalition ("CAIR Coalition") and Refugee and Immigrant Center for Education and Legal Services, Inc. ("RAICES") will be overburdened with efforts to assist numerous other clients facing removal. And thousands more individuals in the putative plaintiff class will have their asylum claims summarily denied. The Government, in contrast, would face no meaningful harm from being made to adhere to the asylum system that has prevailed for decades and that the law requires.

A temporary restraining order and a preliminary injunction should be issued, and the Government should be barred from enforcing this unlawful policy nationwide.[1]

BACKGROUND

A. Existing Asylum Framework

The United States has long held itself out as a refuge for those fleeing persecution. To fulfill that promise, the Immigration and Nationality Act (INA) enables aliens to obtain asylum if they demonstrate a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1). A grant of asylum entitles aliens to remain in this country, accompanied by their spouses and children, and to live and work here in safety. *Id.* § 1158(b)(3), (c)(1).

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[1] Another district court recently issued a temporary restraining order blocking enforcement of the policy. *East Bay Sanctuary Covenant v. Trump*, Case No. 18-cv-06810-JST, 2018 WL 6053140 (N.D. Cal. Nov. 19, 2018). The existence of that TRO does not negate the need for injunctive relief, particularly given that the Government has filed emergency applications to stay or vacate that injunction. Courts regularly issue overlapping injunctive relief in similar situations. *See, e.g.*, *Hawaii v. Trump*, 241 F. Supp. 3d 1119 (D. Haw. 2017) (issuing a TRO against the second iteration of the travel ban) (D. Haw. 2017); *IRAP v. Trump*, 241 F. Supp. 3d 539 (D. Md. 2017) (same); *see also Batalla Vidal v. Nielsen*, 2279 F. Supp. 3d 401, 435 (E.D.N.Y. 2018) (granting a preliminary injunction that duplicated the scope of an existing order because "Plaintiffs would no doubt suffer irreparable harm" if the existing injunction were lifted).

Since the enactment of the Refugee Act of 1980, Congress has made clear that *every* alien present in the country has a right to seek asylum—regardless of how that alien arrived here, or whether she is present in the United States lawfully. Section 1158(a)(1) states in unequivocal terms that "*[a]ny* alien who is physically present in the United States or who arrives in the United States . . . *whether or not at a designated port of arrival and . . . irrespective of such alien's status*, may apply for asylum." 8 U.S.C. § 1158(a)(1) (emphasis added) (internal parenthesis omitted). That language codifies the commitments the United States undertook when it joined the 1967 United Nations Protocol Respecting the Status of Refugees, 19 U.S.T. 6259 ("Protocol"), which bars the United States from "denying a person access to the refugee claim process on account of his illegal entry." *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, at ¶ 63, [2015] 3 S.C.R. 704 (emphasis added);[2] *see* Protocol, art. 31(1).

The INA permits aliens to seek asylum either by filing an affirmative application, *see* 8 U.S.C. § 1158(a), or by asserting asylum as a defense to removal. When an alien is placed in ordinary removal proceedings under Section 240 of the Immigration Act, she may avoid removal by establishing through adversarial proceedings that she is eligible for and should be granted asylum. 8 U.S.C. § 1229a. When an alien is placed in *expedited* removal proceedings,[3] she may avoid immediate removal merely by showing a "significant *possibility*" of establishing asylum eligibility—a showing referred to as a "credible fear of persecution." 8 U.S.C. § 1225(b)(1)(B). If an alien makes the requisite credible-fear showing, she "shall be detained for further consideration of [her] application for asylum," *id.* § 1225(b)(1)(B)(ii), generally through Section

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[2] *Available at* https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15647/index.do.

[3] Expedited removal typically applies to undocumented aliens who have entered without inspection and are apprehended within 14 days of entry and 100 miles of the border. *Designating Aliens for Expedited Removal*, 69 Fed. Reg. 48,877 (Aug. 11, 2004); 8 U.S.C. § 1225(b)(1).

240 proceedings.

Unaccompanied alien children present a special case. Under the TVPRA, unaccompanied children who cross the border and seek asylum cannot be subject to credible-fear screening or standard adversarial proceedings. 8 U.S.C. § 1232. Instead, those children must be given an opportunity to present their claims to an asylum officer in a non-adversarial setting pursuant to procedures that are appropriate to their youth and vulnerability. *Id.*

B. Individuals Seeking Asylum

Individuals seeking asylum in the United States are often fleeing countries plagued by some of the worst conditions in the world. Compl. ¶ 52. In particular, countries in the "Northern Triangle" region of Central America—El Salvador, Guatemala, and Honduras—have experienced epidemic levels of violence in recent years. *Id.* ¶ 53. The rival gangs MS-13 and the 18th Street Gang are engaged in a brutal fight for territory and control. *Id.* ¶ 58. As part of that conflict, the gangs have targeted children, women, and LGBT individuals, all of whom have experienced skyrocketing levels of violence. *Id.* ¶¶ 54-62. The governments of those countries have been unable to protect these individuals, and indeed many local government officials are themselves complicit in gang activity. *Id.* ¶¶ 53-54, 56, 62.

Asylum seekers frequently undergo long and dangerous journeys to come to the United States. Approximately 60% of women and girls are raped while migrating across Mexico. *Id.* ¶ 67. LGBT individuals are regularly subject to persecution in Mexico. *Id.* ¶ 71. And individuals have reported that it is difficult or "impossible" to obtain asylum in Mexico, where the rates of violence there have dramatically increased in recent years. *Id.* ¶¶ 69.

Upon arriving at the southern border of the United States, many asylum seekers find that it is infeasible to enter through an approved port of entry. *Id.* ¶ 72. Some asylum seekers are

unaware that approved ports of entry exist. *Id.* In other cases, approved ports of entry are difficult to access, causing migrants to attempt unauthorized crossings at the border. *Id.* In addition, Customs and Border Protection (CBP) engages in a well-documented practice of "metering," in which officers only allow an asylum seeker to cross the border if space is available in the port of entry.[4] *Id.* ¶ 73. Pursuant to that policy, refugees often must wait for weeks or longer to enter lawfully, all while enduring severe weather conditions, overcrowded refugee camps, and daily threats of kidnapping, rape, and other crimes. *Id.* ¶¶ 74-77.

Despite the scale of this refugee crisis, the rate of unlawful entry across the southern border is at its lowest level in 46 years. *Id.* ¶ 83. Last year, CBP reported 310,531 arrests for unlawful entry at the southern border, down from a peak of 1,676,438 in 2000. *Id.* And the majority of the individuals who do cross the southern border unlawfully and claim asylum—including 82% of women seeking asylum from Northern Triangle countries—have been found to have credible fears of persecution. *Id.* ¶¶ 64-65.

C. The Rule and Proclamation

Over the past two years, Defendants the Department of Justice ("DOJ"), the Department of Homeland Security ("DHS"), President Donald Trump, and other officials and agencies responsible for enforcing the Nation's asylum laws have taken multiple actions to limit refugees' ability to seek asylum in the United States. For example, in April 2018, the President announced a "Zero Tolerance" policy under which the Government began separating detained migrant parents from their children. *Id.* ¶ 85. That policy sparked a national outcry, and in June 2018 a district court entered a preliminary injunction preventing its enforcement. *Id.* ¶¶ 86-87.

On November 9, Defendants issued the policy at stake here. Without undergoing notice

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[4] DHS, Office of Inspector Gen., *Special Review—Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* 6 (Sept. 27, 2018).

and comment procedures, the Department of Homeland Security and the Department of Justice jointly issued an interim final rule (the "Rule") providing that any individuals subject to a presidential proclamation restricting entry through the southern border are ineligible for asylum. *See Aliens Subject to a Bar on Entry under Certain Presidential Proclamations; Procedures for Protection Claims*, 83 Fed. Reg. 55,934 (Nov. 9, 2018). That same day, the President signed a proclamation suspending the entry of all persons entering the United States at the southern border with Mexico outside a designated port of entry. Proclamation No. 9822, 83 Fed. Reg. 57,661 (Nov. 9, 2018) (the "Proclamation").

This new policy turns the existing asylum framework on its head for those who enter at the southern border. Whereas Section 1158(a)(1) mandates that an alien must be permitted to apply for asylum "whether or not [she enters] at a designated point of arrival," the Rule and Proclamation establish a "mandatory bar on eligibility for asylum" for aliens who "crossed [the southern border] between the ports of entry." 83 Fed. Reg. at 55,939-40. Moreover, whereas Section 1225 entitles aliens to avoid expedited removal by establishing a "credible fear of persecution," the Rule provides that an asylum officer "shall enter a negative credible fear determination" for any alien subject to the Proclamation. *Id.* at 55,952.

In place of the asylum system mandated by statute, the Rule imposes a dramatically higher bar on those individuals subject to the Proclamation, providing that they may remain in the United States only if they establish that they are eligible for "withholding of removal" under 8 U.S.C. § 1231(b)(3) or the Convention Against Torture ("CAT"). While an individual may be eligible for asylum if she faces even a 10% risk of persecution, withholding of removal is available only to those individuals who face a greater than 50% risk of being persecuted. *See I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 431, 440 (1987). Furthermore, individuals may avoid

expedited removal only by meeting the "higher screening standard" of showing a "*reasonable* fear of persecution." 83 Fed. Reg. at 55,942 (emphasis added) (internal quotation marks omitted). Even if individuals surmount that burden, a grant of withholding of removal accords markedly fewer benefits than a grant of asylum, among other things by furnishing no right for an alien's spouse and children to join her in the country. *Id.* at 55,939.

And that is not the only change. Whereas unaccompanied children previously received special non-adversarial proceedings in which to present their claims for asylum, those children will now be summarily informed that they are ineligible for asylum, and compelled to undergo the same withholding-of-removal process as adults. Mem. from L. Francis Cissna, Director, USCIS, *Procedural Guidance for Implementing Regulatory Changes Created by Interim Final Rule, Aliens Subject to a Bar on Entry under Certain Presidential Proclamations; Procedures for Protection Claims* at 6 (Nov. 9, 2018). In addition, whereas existing asylum procedures entitle families that arrive together to be processed as a unit and to attain asylum together, 8 U.S.C. § 1158(b)(3), each individual now must seek relief separately, regardless of family ties.

D. The Effects of the Rule and Proclamation

The effects of the Rule and Proclamation are devastating. Many aliens fleeing horrific persecution and violence in their home countries risk being summarily returned to those countries because they cannot satisfy the more stringent reasonable fear standard, or simply because they cannot marshal the relevant facts on the expedited schedule the regulation mandates.

The Individual Plaintiffs' story is representative. Plaintiff S.M.S.R. and her minor son R.S.P.S. are citizens of Honduras. *Id.* ¶ 12; Ex. 1 (Decl. of S.M.S.R.), ¶¶ 1-2 ("S.M.S.R. Decl."); Ex. 2 (Decl. of R.S.P.S.), ¶ 1 ("R.S.P.S. Decl."). While living in Honduras, they faced horrific

threats and violence at the hands of MS-13. Compl. ¶ 12; S.M.S.R. Decl. ¶ 4; R.S.P.S. Decl. ¶ 2. The gang repeatedly attacked R.S.P.S., leaving him with a scar and bruises, and threatened to kill both him and S.M.S.R. on at least four occasions in the last eight months, because S.M.S.R. refused to live with the gang as their "wife" and R.S.P.S. refused to join MS-13. Compl. ¶ 12; S.M.S.R. Decl. ¶ 5; R.S.P.S. Decl. ¶ 3. S.M.S.R. and R.S.P.S. could not seek protection from police officers, who have befriended the gang members and been seen receiving payments from them. Compl. ¶ 13; S.M.S.R. Decl. ¶¶ 16-19, 42. Nor could they live safely elsewhere in Honduras, because MS-13 took pictures of S.M.S.R. and told her they would find her. Compl. ¶ 13; S.M.S.R. Decl. ¶ 26; R.S.P.S. Decl. ¶ 19.

S.M.S.R. and R.S.P.S. finally fled after receiving the most recent death threat from MS-13 gang members in early October 2018. Compl. ¶ 14; S.M.S.R. Decl. ¶ 28; R.S.P.S. Decl. ¶¶ 11-12. Upon crossing the southern border without inspection on November 10, they were quickly apprehended and placed in expedited removal proceedings. Compl. ¶ 14; S.M.S.R. Decl. ¶¶ 30-31. Because of the Rule and Proclamation, S.M.S.R. and R.S.P.S. were not subject to the credible fear interview they were led to expect by those who had assisted them in their detention center. Compl. ¶ 15; S.M.S.R. Decl. ¶¶ 32-38. Instead, S.M.S.R. was informed that she and her son would be entitled to relief other than asylum only if they could meet the "reasonable fear" standard. Compl. ¶ 15; S.M.S.R. Decl. ¶ 37. S.M.S.R. had no understanding of that standard or how they could meet it, and was extremely fearful that they would swiftly be returned to Honduras, where they would face near certain violence. Compl. ¶ 15; S.M.S.R. Decl. ¶¶ 38-39.

These fears were forestalled only because a set of plaintiffs in the Northern District of California obtained a temporary restraining order barring enforcement of the Rule and Proclamation. *See East Bay*, 2018 WL 6053140. But the Government has noticed an appeal of

the TRO and has filed an emergency request for a stay with the Ninth Circuit. If that stay is granted, S.M.S.R. and R.S.P.S will again be in fear of immediate removal.

It is not only the individuals subject to the Rule and Proclamation who are harmed by it; organizations that work with asylum seekers have also been injured by the regulation and order. Plaintiff CAIR Coalition is a nonprofit organization that provides direct legal services to men, women, and children in asylum proceedings. Compl. ¶ 21; Ex. 3 (Decl. of Claudia Cubas), ¶¶ 4, 9 ("Cubas Decl."). As a result of the Rule, CAIR Coalition will be required to expend additional resources to assist individuals in satisfying the heightened "reasonable fear" standard, preparing guidance materials on the new rule, and establishing new procedures for processing claims. Compl. ¶¶ 139-144; Cubas Decl. ¶¶ 14, 17-19, 21-29. CAIR Coalition estimates that it will need to spend double the time assisting adult asylum-seekers in preparing for interviews, and significantly more resources assisting children with that process. Compl. ¶¶ 144-148; Cubas Decl. ¶¶ 21-24, 33-34. As a result, the Rule will reduce the number of individuals CAIR Coalition can assist, curtail its other activities, and jeopardize its already tight budget. Compl. ¶¶ 150-159; Cubas Decl. ¶¶ 14, 24, 26, 29-31, 37-39.

Similarly, Plaintiff RAICES is a nonprofit organization that provides consultations and direct legal services to immigrants and refugees in Texas. Compl. ¶ 22; Ex. 4 (Decl. of Michelle Garza), ¶ 4 ("Garza Pareja Decl."). The Rule and Proclamation will frustrate RAICES's mission to serve as many migrant clients as possible, require RAICES to create costly new procedures to assist individuals in complying with the rule, and divert resources from its numerous other programs. Compl. ¶¶ 163-178; Garza Pareja Decl. ¶¶ 6, 32-36. Furthermore, Defendants' failure to undergo notice and comment procedures has compromised RAICES's ability to inform the Government of the substantial harms—both to the organization and to its clients—that the policy

would create. Compl. ¶ 179; Garza Pareja Decl. ¶ 37.

ARGUMENT

A plaintiff seeking a temporary restraining order or preliminary injunctive relief must show "(1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest." *Aamer* v. *Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014); *see also Morgan Stanley DW, Inc.* v. *Rothe*, 150 F. Supp. 2d 67, 72 (D.D.C. 2001). Plaintiffs easily satisfy those requirements here.

I. Plaintiffs' Claims Are Likely To Succeed On The Merits.

A. The Rule Violates Section 1158(a)(1).

Congress enacted the Refugee Act of 1980 to further "the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homeland," Refugee Act of 1980, Pub. L. No. 96-212, § 101, 94 Stat. 102. Its central provision, 8 U.S.C. § 1158, seeks to fulfill that promise. In sweeping terms, it provides that:

> Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

8 U.S.C. § 1158(a)(1). This provision mandates that "[a]ny" alien present in the United States may seek asylum, whether in affirmative asylum proceedings or as a defense to removal under 8 U.S.C. § 1225(b). And it specifically bars the Government from denying aliens that opportunity based on how they arrived here—that is, an alien must be permitted to seek asylum "whether or not [she arrived] at a designated port of arrival," and "irrespective of such alien's status." 8 U.S.C. § 1158(a)(1).

By mandating that all aliens will be considered for asylum, regardless of their point of

entry or status, Congress codified the commitments that the United States undertook when it acceded to the 1967 United Nations Protocol Relating to the Status of Refugees. "[O]ne of Congress's primary purposes" in enacting the Refugee Act was "to bring United States refugee law into conformance" with the 1967 Protocol. *Cardoza-Fonseca*, 480 U.S. at 436. Article 31(1) of that treaty provides that

> The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

19 U.S.T. 6259, 6275. As the great weight of authority makes clear, this provision—like Section 1158(a) itself—prohibits the Government from "denying a person access to the refugee claim process on account of his illegal entry." *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, at ¶ 63, [2015] 3 S.C.R. 704 (emphasis added).

The Rule flouts these commitments. It denies aliens the right to seek asylum on precisely the grounds that Section 1158(a) forbids: whether the alien entered at "a designated port of arrival" and whether the alien has lawful "status." And in so doing, it violates the treaty commitment that Congress enacted the statute to codify.

1. Section 1158(a)(1) provides that "[a]ny alien who is physically present in the United States or who arrives in the United States . . . whether or not at a designated port of arrival . . . may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title." 8 U.S.C. § 1158(a)(1). The meaning of this provision is straightforward. Aliens who are present in the United States have a right to apply for asylum "whether or not" they "arrive[d] . . . at a designated port of arrival." *Id.* Accordingly, the Government may not bar aliens from seeking asylum because they entered the country outside a designated port of entry.

Yet that is precisely what the Government has done here. The Rule and Proclamation together state that an alien who crosses "the southern border . . . between the ports of entry" is categorically unable to seek asylum. 83 Fed. Reg. at 55,940. It is difficult to conceive of a more direct infringement of an alien's right to seek asylum "whether or not [she entered] at a designated port of entry." 8 U.S.C. § 1158(a)(1).

The Government's efforts to defend this brazen statutory violation are without merit. ***First***, the Government argues that it has not infringed aliens' right to "*apply* for asylum" regardless of where they entered because it has phrased its prohibition as a restriction on "asylum *eligibility*." 83 Fed. Reg. at 55,941 (emphasis added). That distinction "strains credulity." *East Bay*, 2018 WL 6053140, at *12. A categorical restriction on asylum eligibility operates in exactly the same way as a complete elimination of the right to apply for asylum: It makes asylum entirely unavailable to the class of aliens, and necessarily requires the rejection of any asylum claim that they file. As a matter of plain English, no one would say that aliens have a right to apply for a benefit they are categorically barred from obtaining. If, by analogy, a law stated that individuals may "apply for college regardless of their race," a university would surely violate that law by stating that while African-Americans may *apply* for admission, the admissions office will automatically reject all of their applications upon receipt.

Indeed, attaching dispositive significance to the Government's choice of words would render the protections afforded by Section 1158(a)(1) a "dead letter." *Id.* Under the Government's proposed interpretation, it could sidestep all of the protections in Section 1158(a)(1) simply by enacting the prohibited distinctions as limits on asylum "eligibility" rather than on asylum applications. It could, for instance, eliminate aliens' right to apply for asylum "irrespective of such alien's status" by declaring all undocumented aliens "ineligible" to obtain

asylum. 8 U.S.C. § 1158(a)(1). Courts do not construe statutes, particularly immigration statutes, so as to render the "statutory right[s]" they afford into "nullit[ies]." *Dada v. Mukasey*, 554 U.S. 1, 16 (2008); *see Costello v. I.N.S.*, 376 U.S. 120, 127-28 (1964) (counseling hesitation "before adopting a construction of [an immigration statute] which would, with respect to an entire class of aliens, completely nullify a procedure so intrinsic a part of the legislative scheme").

The Government's proposed distinction between eligibility and ability to apply for asylum rings particularly hollow here. Under longstanding DHS regulations, asylum officers may not even *consider* whether an alien is subject to the "mandatory bars to applying for" or obtaining asylum until after an alien has passed the credible-fear screening and been placed in Section 240 proceedings. 8 C.F.R. § 208.30(e)(5); *see* 83 Fed. Reg. at 55,944 (describing this rule). The Rule, by contrast, requires asylum officers to consider whether an alien entered the country between ports of entry before adjudicating the credible-fear claim, and to automatically deny asylum if the alien is found subject to the Proclamation before any further proceedings can take place. 83 Fed. Reg. at 55,952. In other words, the Rule is enforced *before* the statutory bars on "apply[ing] for asylum." 8 U.S.C. § 1158(a)(1). The conclusion is inescapable that the Rule impermissibly inhibits an alien's right to "apply for asylum" regardless of whether she "arrive[d] . . . at a designated port of arrival." *Id.*

Second, the Government claims that the Rule does not violate Section 1158(a)(1) because it does not prevent *all* aliens who entered outside of a designated port of arrival from seeking asylum; rather, the Government observes, the Rule applies only to those aliens who entered outside a port of arrival on one of the Nation's two land borders during the time the Proclamation is in effect. 83 Fed. Reg. at 55,941. But the Government does not need to strip *every* alien of the

right guaranteed by Section 1158(a)(1) to violate the statute: By its plain terms, Section 1158(a)(1) guarantees that "[a]ny alien" may apply for asylum "whether or not [she arrived] at a designated port of arrival." *Id.* § 1158(a)(1). The Government thus violates the statute by making even one alien's ability to seek asylum turn on that very distinction. If two otherwise identically situated aliens cross the southern border while the Proclamation is in effect, and one enters at a designated port of arrival and the other does not, the alien who enters outside the port of entry will be categorically barred from seeking asylum while the other can begin the asylum application process.

The Government's contrary position would once again empty Section 1158(a)(1) of any real force. It would enable the Government to reintroduce the restrictions prohibited by Section 1158(a)(1) so long as it applied them to some subset of applicants. That would allow the Government to deny asylum based on an "alien's status" as an illegal immigrant, as long as it made that restriction effective only for aliens who entered after a particular date. *Id.* Likewise, it would allow the Government to state that aliens "physically present" in the United States are only eligible to apply for asylum if they live in Montana. Congress plainly did not intend to allow the Government to limit protections designed for "[a]ny" alien to a small portion of the protected class. Violating the statute as to some aliens is still violating the statute. *Id.*

Third, the Government notes that it has previously deemed the fact that an alien entered the country unlawfully "a proper and relevant discretionary factor" in deciding whether to grant asylum. 83 Fed. Reg. at 55,937 (internal quotation marks and citation omitted). But there is an obvious difference between making something a factor in a decision and making it dispositive. For example, a school that invites students to apply regardless of G.P.A. could hardly be faulted for considering G.P.A. as an admissions factor, but the school's invitation would appear

disingenuous if it in fact had a decisive G.P.A. cutoff. Similarly, the Government's preexisting policy does not deny anyone the right to seek asylum solely on the basis of their location of entry; to the contrary, it holds that "circumvention of orderly refugee procedures . . . should *not* be considered in such a way that the practical effect is to deny relief in virtually all cases." *Matter of Pula*, 19 I&N Dec. 467, 473 (BIA 1987) (emphasis added); *see, e.g.*, *Hussam F. v. Sessions*, 897 F.3d 707, 718 (6th Cir. 2018) ("[U]nder *Pula*, the Board's analysis may not begin and end with his failure to follow proper immigration procedures."). The new policy, in contrast, categorically forbids such aliens from obtaining asylum. In addition to being "an extreme departure from past practice," *East Bay*, 2018 WL 6053140, at *13, this policy operates as an outright prohibition on seeking asylum in a way that the prior, case-by-case, discretionary policy plainly did not.

Fourth, the Government suggests that the Rule makes an alien's right to asylum turn on whether she has violated a proclamation issued pursuant to the President's power under Section 1182(f) and 1185(a), rather than whether she has entered outside of a port of arrival. That is a spurious distinction. An alien violates the proclamation in question merely by entering outside a port of arrival. The President's proclamation power does not permit him to contravene Congress's guarantee that an alien may apply for asylum "whether or not" she entered at such a port. "No court has ever held that § 1182(f) 'allow[s] the President to expressly override particular provisions of the INA.'" *East Bay*, 2018 WL 6053140, at *13 (quoting *Trump v. Hawaii*, 138 S. Ct. 2392, 2409 (2018)).

Even setting aside that insurmountable obstacle, *any* regulation that makes the right to asylum turn on whether an alien has entered in violation of a proclamation is an unlawful infringement of an alien's right to seek asylum "irrespective of such alien's status." 8 U.S.C.

§ 1158(a)(1). As multiple Circuits have recognized, that language means that the Government cannot bar aliens from seeking asylum solely because they are subject to a particular ground of inadmissibility. The Third Circuit, for instance, invalidated a regulation that purported to deny asylum hearings to "stowaways" inadmissible under 8 U.S.C. § 1182(a)(6)(D) because it found that such regulation improperly limited asylum claims based on "stowaway status." *Marincas v. Lewis*, 92 F.3d 195, 201 (3d Cir. 1996). Likewise, the Tenth Circuit has concluded that Section 1158(a)(1) bars the Government from categorically denying asylum to "illegal reentrants with reinstated removal orders," if another provision does not expressly authorize such denials. *R-S-C v. Sessions*, 869 F.3d 1176, 1183-84 (10th Cir. 2017).

The Rule operates as just such a forbidden status-based bar on seeking asylum. It provides that aliens are categorically barred from obtaining asylum if they entered the country in violation of a presidential proclamation issued pursuant to Sections 1182(f) and 1185(a). 83 Fed. Reg. at 55,952. As the regulation's preamble expressly acknowledges, it thus bars individuals from obtaining asylum solely because they have "violated the immigration laws" in a particular manner. *Id.* at 55,940. By making an alien's eligibility for asylum depend on her "status" as a violator of a particular immigration restriction, the Rule effects the very sort of discrimination Section 1158(a)(1) forbids.

Finally, the Government claims that the Rule is authorized by Section 1158(b)(2)(C), which permits the Secretary to impose "limitations and conditions" on asylum eligibility. *Id.* at 55,938. But it is a basic principle of administrative law that an agency cannot "escape Congress's clear intent to specifically limit the agency's authority" under one statutory section "by grasping at its separate, more general authority" under another section. *Air All. Houston v. EPA*, 906 F.3d 1049, 1061 (D.C. Cir. 2018). That principle applies with heightened force here,

given that Congress expressly provided that any limits the agency imposes must be "*consistent with* this section." 8 U.S.C. § 1158(b)(2)(C) (emphasis added). For all of the reasons given above, the regulation is not "consistent with," but rather nullifies, the right to apply for asylum "whether or not [the alien entered] at a designated port of arrival." 8 U.S.C. § 1158(a)(1).

2. The 1967 Protocol confirms that the Rule is unlawful. As noted, Congress enacted the Refugee Act to "bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees." *Cardoza-Fonseca*, 480 U.S. at 436. Accordingly, the Supreme Court has held that the Act should be read in a manner consistent with the Nation's obligations under the Protocol. *Id.* at 436-437; *see generally Port Auth. of N.Y. & N.J. v. Dep't of Transp.*, 479 F.3d 21, 31 (D.C. Cir. 2007) ("[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains" (quoting *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804))). In discerning what the Protocol means, moreover, the Court has instructed that courts should draw "significant guidance" from the Office of the United Nations High Commissioner for Refugees (UNHCR), the authoritative international body entrusted with the Protocol's enforcement. *Cardoza-Fonseca*, 480 U.S. at 439 & n.22; *accord Asylum Procedures*, 65 Fed. Reg. 76,121, 76,127 (Dec. 6, 2000) (noting that "Congress sought to conform" the statute to the Protocol, and that the UNHCR Handbook is a "useful interpretive aid" in understanding is meaning) (internal quotation marks and citation omitted).

Article 31(1) of the Protocol prohibits the restrictions imposed by the Rule. As relevant, it provides that states may not "impose penalties, on account of their illegal entry or presence, on refugees who . . . enter or are present in their territory without authorization." 19 U.S.T. at 6275. As a recent interpretive document issued by the UNHCR explains, this provision prohibits not

only the imposition of "criminal" sanctions for unlawful entry, but "*any* detriment for reason of [an alien's] unauthorized entry or presence in the asylum country." Cathryn Costello et al., UNHCR, Div. of Int'l Protection, *Article 31 of the 1951 Convention Relating to the Status of Refugees* 32-33 (July 2017) (emphasis added).[5] Thus, the Canadian Supreme Court has explained that it is "generally accepted" that "*denying a person access to the refugee claim process* on account of his illegal entry . . . is a 'penalty' within the meaning of art. 31(1)." *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, at ¶ 63, [2015] 3 S.C.R. 704 (emphasis added). A leading treatise on refugee law likewise explains that "measures such as arbitrary detention or *procedural bars on asylum* may constitute penalties" within the meaning of Article 31. Guy Goodwin-Gill & Jane McAdam, The Refugee in International Law 266 (3d ed. 2007) (emphasis added); *see also* James C. Hathaway, *The Rights of Refugees Under International Law* 405-12 (2005) (endorsing similar view).

The Rule contravenes that limitation. It directs that refugees who enter the country without authorization cannot pursue ordinary asylum processes, but instead must be denied entry unless they can satisfy the considerably more demanding "reasonable fear" standard. 83 Fed. Reg. at 55,952. The Rule thus subjects aliens to "procedural bars on asylum" because of their "illegal entry or presence." 19 U.S.T. at 6275. That is a "penalty" prohibited by Article 31(1).

The Government claims that "[c]ourts have held . . . that limiting the ability to apply for asylum does not constitute a prohibited 'penalty' under Article 31(1)." 83 Fed. Reg. at 55,939. Not so. The cases cited by the Government held only that "the Protocol does not extend so far as to 'afford all aliens *repeated* opportunities to apply for asylum, *each and every time* they enter the United States illegally.'" *Mejia v. Sessions*, 866 F.3d 573, 588 (4th Cir. 2017) (emphases

[5] *Available at* https://www.refworld.org/pdfid/59ad55c24.pdf

added) (quoting Gov't Br. 37-38); *see Cazun v. Att'y Gen.*, 856 F.3d 249, 257 n.16 (3d Cir. 2017). Those cases do not address whether the Government inflicts a penalty by barring an alien from applying for asylum even *once*, when she has never previously entered. They therefore offer no basis to abandon the great weight of authority holding that Article 31 prohibits a country from depriving aliens of ordinary asylum processes based on their unlawful entry.[6]

The Government also contends that the Protocol is "not directly enforceable in U.S. law." 83 Fed. Reg. at 55,939. But that is beside the point. As the Government acknowledges, Congress "implemented" the commitments contained in the Protocol "through domestic implementing legislation": the Refugee Act. *Id.* And Section 1158(a) contains protections that closely mirror the protections that Article 31(1) affords. *See* 8 U.S.C. § 1158(a)(1) (entitling an alien to apply for asylum "whether or not [she entered] at a designated port of arrival" and "irrespective of such alien's status"). Section 1158(a) should therefore be construed—as its plain text mandates—to prohibit the Rule's unlawful restrictions on asylum.

B. The Rule Exceeds The Authority Granted By Section 1158(b)(2)(C).

The Rule is also unlawful because it exceeds the rulemaking power vested in the Attorney General by Section 1158(b)(2). That provision sets forth six specified circumstances in which the Attorney General may find aliens ineligible for asylum. 8 U.S.C. § 1158(b)(2)(A)-(B). It then adds, in Section 1158(b)(2)(C), that "[t]he Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be

[6] The Third Circuit noted in passing that, in its view, "neither the text of the Article nor its history clearly indicates that" a restriction that does not "imprison or fine aliens . . . is the sort of criminal 'penalty' forbidden" by Article 31. *Cazun*, 856 F.3d at 257 n.16 (citing Hathaway, *The Rights of Refugees Under International Law* at 405, 408, 411). But the sole support the court offered for that tentative suggestion was a treatise that stated just the opposite—*viz.*, that "there is *no* sound basis to interpret" Article 31(1) as limited to "criminal" penalties. Hathaway, *The Rights of Refugees Under International Law* at 412.

ineligible for asylum." In two separate respects, the Rule exceeds that rulemaking authority.

1. The Rule impermissibly empowers the President, rather than the Attorney General, to establish limitations and conditions on asylum. Section 1158(2)(C) states that "[t]he Attorney General" may "establish . . . limitations and conditions" on asylum eligibility. But the Rule purports to transfer that power wholesale to the President. It provides that, "on or after" the date of the Rule's issuance, aliens will be "ineligible for asylum" if they are "subject to a presidential proclamation . . . suspending or limiting the entry of aliens along the southern border with Mexico." 83 Fed. Reg. at 55,952. The Rule then writes the President a blank check to determine what the nature of that limit will be: It specifies that the proclamation may define (1) the "terms" on which aliens must enter the country," (2) the "waiver[s] or exception[s]" to those terms, and (3) whether the proclamation "affect[s] eligibility for asylum" at all. *Id.*

In every real sense, then, it is the President, not the Attorney General, who has determined the conditions and limitations on asylum eligibility in this case. Indeed, the sole purpose and effect of the President's proclamation is to impose such conditions: By its own terms, the Proclamation merely bars entry by aliens who are already statutorily inadmissible. This subterfuge is unlawful for two reasons.

First, as the Supreme Court made clear in *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155 (1993), when Congress specifies a particular actor within the Executive Branch in the INA, courts must respect that choice. A "reference to the Attorney General in the statutory text" of the INA "cannot reasonably be construed to describe . . . the President." 509 U.S. at 173. Indeed, the INA provides that "[t]he Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, *except insofar as this chapter or such laws relate to the powers,*

functions, and duties conferred upon the President" or "Attorney General." 8 U.S.C. § 1103(a)(1) (emphasis added); *see Sale*, 509 U.S. at 171-73. When Congress specified the Attorney General in the INA, Congress meant it.

Second, giving the President the unilateral power to define new classes of asylum ineligibility would allow for an improper end-run around the requirements of the Administrative Procedure Act (APA). By assigning the "Attorney General" the power to establish ineligibility criteria "by regulation," 8 U.S.C. § 1158(b)(2)(C), Congress ensured that any such "regulation" would be subject to the procedural and substantive requirements of the APA. A presidential proclamation, however, is generally not subject to the APA's requirements. *See Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992) ("the President is not an agency within the meaning of the [APA].").[7] An agency cannot shield its action from the APA's provisions for public participation and judicial review by outsourcing its authority to the President alone.

2. The Rule exceeds the Attorney General's authority under Section 1158(b)(2)(C) for an additional reason: It introduces a limit on the availability of asylum that is dramatically different from the restrictions specified in the statute itself.

It is a basic canon of statutory construction that a "residual clause" should be "controlled and defined by reference to the enumerated categories" in the list that precedes it. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114-115 (2001); *see also, e.g.*, *Sossamon v. Texas*, 563 U.S. 277, 291-92 (2011); *Wash. State Dep't of Social and Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 384 (2003). In accordance with that canon, the D.C. Circuit has held that

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[7] To be clear, the Rule is unquestionably an agency "rulemaking" subject to the APA's substantive and procedural requirements, *see* 5 U.S.C. § 553, and is unlawful because it improperly violated those requirements, *see infra* Part I.D. The Rule is also "not in accordance with law," 5 U.S.C. § 706(2)(A), because it improperly delegates rulemaking power to the President (in an unsuccessful effort to circumvent the APA's procedural requirements). That is an independent reason the Rule must be "set aside." *Id.* § 706(2).

the "catch-all, residual clause" in Federal Rule of Civil Procedure 60(b) must be read narrowly in keeping with the preceding enumerated exceptions and the essential purpose underlying the rule. *Twelve John Does v. District of Columbia*, 841 F.2d 1133, 1140 (D.C. Cir. 1988); *see also United States v. Philip Morris USA, Inc.*, 396 F.3d 1190, 1200 (D.C. Cir. 2005) (a court should "expand on the remedies explicitly included in [a] statute only with remedies similar in nature to those enumerated").

By the same token, when the Attorney General exercises his authority to "establish additional limitations and conditions" on asylum, 8 U.S.C. § 1158(b)(2)(C), those new limits must be "similar in nature to those enumerated." *Philip Morris*, 396 F.3d at 1200. And, while "canons of construction need not be conclusive" in all cases, *Circuit City*, 532 U.S. at 114-15, the text of Section 1158(b)(2)(C) removes any doubt that Congress intended for the Attorney General's authority to be "controlled" by the "enumerated" restrictions on eligibility. *Id.* Congress granted the Attorney General his authority to supplement the specified limits in a provision entitled "*Additional* Limitations," 8 U.S.C. § 1158(b)(2)(C), linking the Attorney General's authority to the congressionally dictated restrictions in Section 1158(b)(2)(A). (Emphasis added). It echoed the same language in the provision itself, and went even further by explicitly mandating that any new limits must be "consistent with this section." 8 U.S.C. § 1158(b)(2)(C).

Despite this clear mandate, the Rule imposes restrictions that are far afield from the statutorily specified limits on asylum. Each and every one of those statutory limits directs the Attorney General to bar asylum because the alien's presence constitutes a danger to the country or because the alien has a diminished need for asylum. Thus, the first five limits prohibit granting asylum to those who have engaged in persecution, committed serious crimes, or who

otherwise represent a "danger to the security of the United States." 8 USC § 1158(b)(2)(A)(i)-(v). The final restriction bars those who have been "firmly resettled in another country." *Id.* § 1158(b)(2)(A)(vi). In other words, each provision instructs the Executive to deny asylum because of the increased risks or decreased benefits of allowing a particular alien to remain in the United States.

The Rule, however, has nothing to do with the risks or benefits of permitting a particular alien to remain in the country. Neither the Federal Register notice nor the Proclamation offers any reason to believe that the affected aliens are more dangerous or less likely to need asylum. To the contrary, both the regulation and the Proclamation contemplate that *exactly the same aliens* may be eligible for asylum if they simply cross at a port of entry. *See* 83 Fed. Reg. at 55940 (stating that the policy's expected result will be "to channel to ports of entry aliens who seek to enter the United States and assert an intention to apply for asylum"). Thus, unlike each of the statutory restrictions, the limit will bar many aliens who are not dangerous and who badly need, and would legitimately seek, asylum.

The Government has attempted to defend the Rule by arguing that it is "consistent with" the enumerated restrictions because—like the first five statutory restrictions—the Rule is motivated by public safety and foreign-relations concerns. That ignores a key feature of each of these restrictions: They promote public safety and foreign relations concerns exclusively by barring asylum to those who may themselves be considered dangerous. Congress therefore indicated not only an acceptable *purpose* for limitations and conditions on asylum, but the acceptable *means* for accomplishing that purpose. Because the Rule is not "consistent with" those means, it is unlawful.

The Government also suggested that the Attorney General has imposed similar

limitations in the past, but to date its only example is the Executive bar on asylum for those who have committed fraud. *See Nijjar v. Holder*, 689 F.3d 1077, 1082 (9th Cir. 2012). That example only proves the rule. Unlike the new regulation, the fraud bar—which focuses on an alien's prior criminal acts—is directly analogous to the statutory restrictions on asylum for those who have previously engaged in persecution or criminal activity. Furthermore, the Government's inability to offer any other examples of purportedly analogous regulations demonstrates how sparingly the Executive has used the power in the past. To ensure the limits on that power remain vital, the Rule should be invalidated.

C. The Rule Violates the TVPRA

In addition to violating the INA, the Rule also violates the TVPRA. Congress passed that Act to provide additional procedural protections to unaccompanied children who had previously been subjected to an immigration system designed for adults. Under the TVPRA, unaccompanied children have a statutory right to present their case for asylum to a USCIS asylum officer as opposed to an immigration judge in an adversarial setting. *See Harmon v. Holder*, 758 F.3d 728, 734 (6th Cir. 2014). This additional procedural mechanism affords unaccompanied children a less intimidating and adversarial setting to recount the traumatic and sensitive details surrounding their claims for asylum. *Cf.* 154 Cong. Rec. S10886-01 (daily ed. Dec. 10, 2008) (statement of Sen. Feinstein explaining the purpose of the TVPRA).

As explained in the Procedural Guidance issued by USCIS on November 9, 2018, however, an unaccompanied child subject to the Rule and Proclamation is immediately ineligible for asylum, irrespective of the merits of her claim. Cissna, *Procedural Guidance for Implementing Regulatory Changes Created by Interim Final Rule, Aliens Subject to a Bar on Entry under Certain Presidential Proclamations; Procedures for Protection Claims* at 6.

Accordingly, unaccompanied children are forced back into the immigration system designed for adults: They must present their claims for statutory withholding of removal or protection under the Convention Against Torture to an immigration judge in an adversarial proceeding. *Id.* The Rule thus flatly undermines the TVPRA.

D. The Rule Violates the Administrative Procedure Act.

The Rule is also unlawful because it violates the APA, 5 U.S.C. § 500 *et seq.*, which contains a "basic and comprehensive regulation of procedures" for administrative agencies. *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 523 (1978) (quoting *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950)). The Rule contravenes the APA in two ways: It is arbitrary and capricious, and it was improperly issued to be effective immediately without an opportunity for notice and comment.

1. The Rule Is Arbitrary And Capricious.

"When an administrative agency sets policy, it must provide a reasoned explanation for its action." *Judulang v. Holder*, 565 U.S. 42, 45 (2011). "Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational." *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) (quoting *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998)). In other words, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). Under this standard,

> [A]n agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Id.

The Rule fails this test: There is no rational, evidence-based "connection" between the problem the Rule purports to target and the solution it purports to impose. *Id.* The Rule's stated "aim[]" is "to address an urgent situation at the border." 83 Fed. Reg. at 55,944. Specifically, the Rule states that "there has been a significant increase in the number and percentage of aliens who seek admission or unlawfully enter the United States and then assert an intent to apply for asylum or a fear of persecution." *Id.* The Rule claims that denying asylum categorically to aliens who enter in violation of a presidential proclamation would address that "increase" in three ways. But none is remotely persuasive.

First, the Rule explains that "[a]sylum officers and immigration judges devote significant resources to [credible fear] screening interviews." *Id.* at 55,945. The Rule claims that it would streamline that process, because "determining whether an alien is subject to a proclamation"—and thus ineligible for asylum—"would ordinarily be straightforward." *Id.* at 55,947. But the Rule provides no good reason to think that there would be any overall efficiency gain in screening interviews. Quite the opposite. Under the Rule, asylum officers would still have to conduct a screening interview because all aliens would still be entitled to withholding of removal. They would simply apply the "reasonable fear"—rather than the credible fear—standard. *Id.* Asylum officers conduct "reasonable fear" interviews "in thousands of cases per year already," and experience suggests that applying the higher standard makes the process *more* cumbersome: "asylum officers have historically averaged four to five credible-fear interviews and completions per day, but only two to three reasonable-fear case completions per day." *Id.* In other words, by the Government's own account, screening for reasonable fear takes about *twice* as long.

On top of that, asylum officers would be forced to determine whether an applicant violated a presidential proclamation, and was thus categorically ineligible for asylum, at the screening interviews. Asylum officers do "not appl[y] existing mandatory bars to asylum in credible-fear determinations." *Id.* That means for the first time the scope of the inquiry will have to expand from the narrow question of refugee status to other extrinsic bases for exclusion. *Id.* The Rule acknowledges that this "may in some cases entail additional work." *Id.*

The bottom line, then, is that asylum officers will have to consider a new sort of issue in screening, which the Government acknowledges may lead to "additional work," *id.*, while still considering the question of fear of persecution under a standard that admittedly takes about double the time. The facts before the agencies here thus strongly suggest that the Rule would make the screening process *less*, not more efficient, and would thus compound the problem purportedly motivating the Rule. The Rule should be "set aside" because it is "not supported by the reasons that the agencies adduce." *Fox v. Clinton*, 684 F.3d 67, 75 (D.C. Cir. 2012) (quoting *Tripoli Rocketry Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 437 F.3d 75, 77 (D.C. Cir. 2006)).

Second, DOJ and DHS suggest that the Rule would "create significant overall efficiencies in the Departments' operations." 83 Fed. Reg. at 55,948. In particular, "CBP dedicates enormous resources to attempting to apprehend aliens who cross the border illegally." *Id.* The Rule claims that it would "help the Departments more effectively leverage their resources to promote orderly and efficient processing," presumably by relieving some of the pressure on border agents. *Id.* The problem is that there is no evidence that the Rule would affect the number of aliens who try to enter outside a port of entry. Indeed, the Rule itself concedes that the "Departments are not in a position to determine how all entry proclamations

involving the southern border could affect the decision calculus for various categories of aliens planning to enter the United States through the southern border in the near future." *Id.* That lack of evidence is fatal: It is not "sufficient for an agency to merely recite the terms 'substantial uncertainty' as a justification for its actions." *State Farm*, 463 U.S. at 52.

Nor does the Rule give any reason to think that destitute aliens fleeing persecution would be monitoring the Federal Register to inform their path. *See East Bay*, 2018 WL 6053140, at *17 (noting that "migrants seeking asylum in the United States have neither the same access to information nor the same ability to adjust their behavior" as other parties). Indeed, when assessing the effects of the Proclamation issued contemporaneous with the Rule, the Rule does not even speculate on what impact it would have, and certainly does not explain how any (speculative) redirection of aliens toward ports of entry would free up CBP resources used to patrol the border. On the other hand, the Rule does anticipate "increased wait times" at ports of entry, necessitating additional resources there. In addition, "DHS would . . . also expend additional resources detaining aliens who would have previously received a positive credible-fear determination." 83 Fed. Reg. at 55,947. Thus, the Government's claim of efficiencies in this respect is as unfounded as its assertions with respect to the credible fear interviews. *See Fox*, 684 F.3d at 75 ("no deference is owed to an agency action that is based on an agency's purported expertise where the agency's explanation for its action lacks any coherence" (internal quotation marks and citation omitted)).

Finally, the Rule touts that it will result in fewer proceedings under Section 240. But it offers nothing but speculation to support that assertion. It gives no prediction of how many people will still be subject to the same credible fear standard at ports of entry. And of those subject to the new standard, the Rule acknowledges that USCIS found reasonable fear in nearly

50% of cases in 2017 and 2018, and concedes that the number may rise "when a more general population of aliens became subject to the reasonable-fear screening process." 83 Fed. Reg. at 55,947. The Rule therefore gives no solid indication of how many fewer Section 240 proceedings will result, nor does it give any indication of whether the hypothetical reduction in Section 240 proceedings would outweigh the inefficiencies that the Rule would introduce outlined above. And, to the extent that delays in the Section 240 process are the real basis for the Rule, the Rule gives no consideration whatsoever to other regulatory strategies for dealing with that backlog beyond this categorical bar to asylum. *See Nat'l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 215 (D.C. Cir. 2013) ("[A]n agency must consider and explain its rejection of 'reasonably obvious alternative[s].'" (quoting *Nat. Res. Def. Council, Inc. v. SEC*, 606 F.2d 1031, 1053 (D.C. Cir. 1979))).

The rule suffers from other logical shortcomings too. The Rule and Proclamation mark a dramatic departure from prior practice. While unlawful entry had been considered a discretionary factor in whether to grant asylum, it could "*not* be considered in such a way that the practical effect is to deny relief in virtually all cases." *Matter of Pula*, 19 I&N Dec. at 473. The Rule gives no explanation whatsoever for that stark departure. And "an unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (internal quotation marks and alterations omitted). Moreover, a rule can be arbitrary and capricious if an agency has "entirely failed to consider an important aspect of the problem." *State Farm*, 371 U.S. at 168. Here, the dire humanitarian consequences of denying asylum to individuals seeking persecution—a concern that has motivated both the international and domestic protection of refugees—is surely "an important aspect of the problem." *Id.* But the

Rule is devoid of any meaningful engagement with it.

In short, then, the "Government exaggerates the cost savings associated" with the Rule, *Judulang*, 565 U.S. at 64, and offers only unfounded speculation in support of its claims of efficiency gains. The Rule is therefore arbitrary and capricious, and should be vacated.

2. The Rule Is Invalid Because It Went Into Effect Immediately And Did Not Go Through Notice And Comment.

In the APA, Congress required administrative agencies to provide a "notice of proposed rule making . . . in the Federal Register" and to "give interested persons an opportunity to participate in the rule making" before the promulgation of a final rule. 5 U.S.C. § 553(b), (c). This notice and comment requirement is no meaningless technicality. The procedure "ensure[s] that agency regulations are tested via exposure to diverse public comment," "ensure[s] fairness to affected parties," and "give[s] affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review." *Int'l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005). Participation may also help legitimize controversial rules in the eyes of the public; as Judge Posner has explained, "[t]he greater the public interest in a rule, the greater reason to allow the public to participate in its formation." *Hoctor v. United States Dep't of Agric.*, 82 F.3d 165, 171 (7th Cir. 1996).

a. The APA "creates a narrow exception" to the notice and comment requirement, "applicable only when an 'agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'" *Council of S. Mountains, Inc. v. Donovan*, 653 F.2d 573, 580 (D.C. Cir. 1981) (quoting 5 U.S.C. § 553). As the D.C. Circuit has explained, "the good-cause inquiry is 'meticulous and demanding.'" *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014) (quoting *N.J. Dep't of*

Envt'l Prot. v. EPA, 626 F.2d 1038, 1046 (D.C.Cir.1980)). Courts must "'narrowly construe[]' and 'reluctantly countenance[]' the exception," *id.* (quoting *Mack Trucks, Inc. v. EPA,* 682 F.3d 87, 93 (D.C. Cir. 2012)), and the agency's decision to bypass notice and comment is reviewed *de novo*, without deference. *Id.* Here, notice and comment would not be "impracticable, unnecessary, or contrary to the public interest," 5 U.S.C. § 553(b), and the Rule should accordingly be vacated.

"In the past," the D.C. Circuit has "approved an agency's decision to bypass notice and comment" on the ground of "[i]mpracticability" "where delay would imminently threaten life or physical property." *Sorensen Commc'ns*, 755 F.3d at 706; *see, e.g.*, *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C.Cir.2004) (finding good cause when rule was "necessary to prevent a possible imminent hazard to aircraft, persons, and property within the United States"); *Donovan*, 653 F.2d at 581 (finding good cause where rule was of "life-saving importance" involving miners in a mine explosion). In other words, the "good cause" exception "should be limited to *emergency* situations." *Mack Trucks, Inc.*, 682 F.3d at 93 (quoting *Am. Fed'n of Gov't Emp., AFL-CIO v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981)); *see Jifry*, 370 F.3d at 1179 (same). The Government has pointed to no emergency warranting a bypass of the normal administrative process here.

Instead, the Government grounds its claim to good cause on this tepid prognostication: "Pre-promulgation notice and comment, or a delay in the effective date, could lead to an increase in migration to the southern border to enter the United States before the rule took effect." 83 Fed. Reg. at 55,950. But it provides no factual basis for that speculation beyond claiming that aliens would have an "added incentive" to cross the border during the comment period. *Id.* The Government gives no evidence that migrants would be aware of any proposed rule, let alone that

it would affect their behavior. It is implausible on its face that desperate refugees fleeing persecution would be monitoring the Federal Register for rules relating to immigration, or that migrants, even if aware of the published rule, would base how they cross the border on the rule rather than other circumstances. *See East Bay*, 2018 WL 6053140, at *17. Moreover, it is already illegal for migrants to cross the border between ports of entry, *see* 8 U.S.C. § 1325, and that criminal sanction is already an ample incentive without the Rule change to asylum procedures. As the Ninth Circuit has explained, the "existence of . . . criminal sanctions on the books at the time the [interim] regulation was promulgated obviated the case for an emergency." *United States v. Valverde*, 628 F.3d 1159, 1168 (9th Cir. 2010).

The Rule also points to the so-called migrant "caravan" approaching the southern border. "[T]here are . . . large numbers of migrants—including thousands of aliens traveling in groups, primarily from Central America—expected to attempt entry at the southern border in the coming weeks." 83 Fed. Reg. at 55,950. Some of these groups, "by reports, intend to come to the United States unlawfully . . . and to express an intent to seek asylum." *Id.* The Rule does not explain the source of these "reports," or give any basis for assessing their credibility. Beyond that, the Rule does not even assert, let alone establish, that there is anything unusual in these "groups" of migrants. Quite the opposite: According to the Rule's own figures, the number of migrants crossing the southern border illegally is down more than three-quarters from its high—from 1.6 million in 2000 to about 300,000 this past year. *See id.* at 55,935, 55,944. In other words, the present circumstances do not present an "emergency situation[]" warranting DHS and DOJ to dispense with the APA's requirements. *Mack Trucks*, 682 F.3d at 93.

An agency may also dispense with notice and comment if it is "unnecessary." 5 U.S.C. § 553(b). "This prong of the good cause inquiry is 'confined to those situations in which the

administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'" *Mack Trucks*, 683 F.3d at 94 (quoting *Util. Solid Waste Activities Grp.*, 236 F.3d 749, 755 (D.C. Cir. 2001)). The Government does not claim that this exception is applicable, and for good reason: The rule is anything but "routine," and will have a large impact on many thousands of individuals and organizations like Plaintiffs.

Finally, "the public interest prong of the good cause exception is met only in the rare circumstance when ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest." *Mack Trucks*, 682 F.3d at 95. Here, the agency's claim that a "notice-and-comment period would have been contrary to the public interest" is "unconvinc[ing] for the same reasons that . . . notice and comment [is] practicable." *Sorensen*, 755 F.3d at 707 n.4. Indeed, the agency itself appears to view these two criteria as interchangeable. 83 Fed. Reg. at 55,950.

The D.C. Circuit has repeatedly "admonished agencies that circumstances justifying reliance on [the good cause] exception are indeed rare and will be accepted only after the court has examined closely proffered rationales justifying the elimination of public procedures." *Donovan*, 653 F.2d at 580 (internal quotation marks and citations omitted). The "proffered rationales" do not withstand a "close[]" examination here. *Id.*

b. The Government also claims that the procedural requirements of the APA are inapplicable because the Rule involves a "military or foreign affairs function of the United States." 5 U.S.C. § 553(a)(1). But the Rule is far afield from that narrow exemption.

Multiple courts have recognized that the "foreign affairs" exception would swallow the rule if it applied to every regulation that had some effect on international relations. The "exception 'is not to be loosely interpreted to mean any function extending beyond the borders of

the United States.'" *Hou Ching Chow v. Att'y General*, 362 F. Supp. 1288, 1290 (D.D.C. 1973) (quoting S. Rep. No. 752, 79th Cong. 1st Sess. (1946)). Such a "loose[]" interpretation would be particularly consequential in the sphere of immigration: "[I]mmigration matters typically implicate foreign affairs at least to some extent," and "it would be problematic if incidental foreign affairs effects eliminated public participation in this entire area of administrative law." *See City of New York v. Permanent Mission of India to United Nations*, 618 F.3d 172, 202 (2d Cir. 2010) (internal quotation marks and citation omitted); *see Yassini v. Crosland*, 618 F.2d 1356, 1360 n.4 (9th Cir. 1980) ("The foreign affairs exception would become distended if applied to INS actions generally, even though immigration matters typically implicate foreign affairs.").

Courts have therefore refused to interpret the "foreign affairs" exception in a manner that would create a blanket APA exemption for all regulations touching upon immigration. *Cf. Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950) (holding APA applicable to deportation proceedings of the Immigration and Naturalization Service); *Hou Ching Chow*, 362 F. Supp. at 1290-91. Rather, "[f]or the exception to apply, the public rulemaking provisions should provoke definitely undesirable international consequences." *Yassini*, 618 F.2d at 1360 n.4. That interpretation is an instance of the courts' more general recognition of the importance of the limits that the APA places on agency action: It is "clear beyond contradiction or cavil that Congress expected, and the courts have held, that the various exceptions to the notice-and-comment provisions of section 553 will be narrowly construed and only reluctantly countenanced." *New Jersey v. EPA*, 626 F.2d 1038, 1045 (D.C. Cir. 1980).

The D.C. Circuit has likewise only applied the exception in narrow circumstances. In *Int'l Brotherhood of Teamsters v. Pena*, 17 F.3d 1478 (D.C. Cir. 1994), for instance, it applied

the exception to an agency rule that "did no more than implement an agreement between the United States and Mexico." *Id.* at 1486. In other words, the regulation in question just implemented an international agreement, and the agency's failure to promulgate the rule would have put the United States in breach of its "international obligations." *Id.*; *WBEN, Inc. v. United States*, 396 F.2d 601, 616 (2d Cir. 1968) (Friendly, J.) (applying foreign affairs exception in similar circumstances).

The circumstances here are not remotely comparable. The Government claims that the exception is applicable because "[t]he flow of aliens across the southern border . . . directly implicates the foreign policy interests of the United States," and because presidential proclamations barring aliens from entry "necessarily implicate our relations with Mexico and the President's foreign policy." 83 Fed. Reg. at 55,950. But this is precisely the sort of "loose[]" interpretation of the "foreign affairs" exception that Congress and the courts have uniformly rejected, and that would exempt large numbers of administrative rulemaking from the requirements of the APA. It is simply not enough for an agency to incant that a particular measure "implicate[s] foreign affairs" in order for that agency to sidestep the APA. *New York*, 618 F.3d at 202; *Yassini*, 618 F.2d at 1360 n.4.

The Rule also claims that the United States is "engaged" in "discussions" with El Salvador, Guatemala, and Honduras about the "mass influx of aliens from Central America," and further that the Rule would facilitate "ongoing discussions of a safe-third-country agreement" between the United States and Mexico. 83 Fed. Reg. at 55,947. But "[n]ot every request for international cooperation seriously may be called 'foreign policy.'" *Jean v. Nelson*, 711 F.2d

1455, 1478 (11th Cir. 1983).[8] And the Rule fails entirely to explain how complying with the APA's requirements would have *any* impact on those ongoing discussions, let alone how "the public rulemaking provisions" would "provoke definitely undesirable international consequences." *Yassini*, 618 F.2d at 1360 n.4; *Jean*, 711 F.2d at 1478 ("Certainly many issues with which the President deals involve national sovereignty; not all would have undesirable international consequences if rulemaking procedures were followed."). In short, the Government's vague invocation of "foreign policy" and "ongoing discussions" is not enough to get around the bedrock requirements of the APA.[9]

* * *

These violations of Section 1158, the TVPRA, and the APA are only the tip of the iceberg. The Government's actions also violate the Due Process Clause, Compl. ¶¶ 200-207, as well as 28 U.S.C. § 508(a) and the Appointments Clause, Compl. ¶¶ 224-231. The litany of legal defects is more than sufficient to demonstrate a likelihood of success on the merits; indeed, it is enough to entitle Plaintiffs to mandamus relief, Compl. ¶¶ 216-223.

II. The Other TRO And Preliminary Injunction Factors Are Readily Met.

A. The Rule Inflicts Irreparable Harm on Plaintiffs.

In deciding whether to grant a temporary restraining order or preliminary injunction, a court must also consider whether the plaintiffs will "suffer irreparable harm before a decision on the merits can be rendered." *Nat'l Parks Conservation Ass'n. v. Semonite*, 282 F. Supp. 3d 284,

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[8] The Eleventh Circuit granted rehearing in this case, but by then the Government had promulgated new regulations and cured the APA defect, so the scope of the foreign affairs exception was no longer at issue. *Jean v. Nelson,* 727 F.2d 957, 962 (11th Cir. 1984), *aff'd* 472 U.S. 846 (1985).

[9] In general an agency must also "publi[sh] a "substantive rule . . . not less than 30 days before its effective date," unless it can show "good cause." 5 U.S.C. § 553(d). For the same reasons already discussed, the agencies here did not have "good cause" to dispense with this requirement.

289 (D.D.C. 2017) (quotation and emphasis omitted). Each of the Plaintiffs has demonstrated that the Rule will inflict the sort of "actual" and "imminent" injury necessary to establish irreparable harm. *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 7-8 (D.C. Cir. 2016) (quotations and alterations omitted).[10]

1. The Individual Plaintiffs Are Irreparably Harmed By the Deprivation of their Statutory Rights and the Increased Risk of Removal.

The Rule and Proclamation deny the Individual Plaintiffs and putative class members their right to seek asylum under the statutory standards, which itself constitutes an irreparable harm. *See Apotex, Inc. v. FDA*, No. 06 Civ. 627, 2006 WL 1030151, at *17 (D.D.C. Apr. 19, 2006) (loss of "a statutory entitlement" constitutes "a harm that has been recognized as sufficiently irreparable" to merit preliminary injunctive relief). But the harm here is particularly acute because the Rule greatly increases the risk that the Individual Plaintiffs will be repatriated to their home countries, where they will be subject to persecution and possibly even death. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (the "severity of deportation" is "the equivalent of banishment or exile") (internal quotation marks and citation omitted).

In the immigration context, this Court has already found that a plaintiff faces irreparable harm where the Government "is blocking access to an existing legal avenue for avoiding removal." *Kirwa v. Dep't of Def.*, 285 F. Supp. 3d 21, 43 (D.D.C. 2017); *see id.* at 44 (the "threat of removal proceedings, which plaintiffs w[ould] face" because of the challenged action

[10] Because Plaintiffs can establish irreparable harm, there should also be no question that Plaintiffs have the injury necessary to demonstrate Article III standing. Moreover, the *East Bay* Court held that the organizational plaintiffs in that case could establish standing in their own right and on behalf of asylum applicants. *East Bay*, 2018 WL 6053140, at *5–*9. The organizational Plaintiffs in this case are similarly situated to the *East Bay* plaintiffs and may establish standing on similar grounds. And the Individual Plaintiffs and putative class have a compelling case for standing because the Rule applies to them, and because they face removal if the Rule is reinstated.

was sufficient to establish irreparable harm, even though there was no guarantee that class members would be subject to those proceedings or ultimately removed). Here, the Government's denial of putative class members' eligibility for asylum deprives them of their ability to participate in asylum proceedings, thereby threatening them with immediate removal. Further, that threat—and the attendant fear—is greatly increased because class members can avoid deportation only by meeting the more stringent standard for withholding of removal, which requires aliens to show a 51% rather than a 10% chance of persecution. *See Cardoza-Fonseca*, 480 U.S. at 431, 440. For example, while the Rule has been enjoined, the Individual Plaintiffs have satisfied the credible fear standard and been placed with a sponsor in the United States as they await their asylum proceedings. But they understand that, if the Rule is reinstated, they will be held to a higher standard and will likely be deported back to Honduras, where they have experienced threats of death or torture at the hands of police-supported gangs. Compl. ¶¶ 12-13, 16-18; S.M.S.R. Decl. ¶¶ 39-42; R.S.P.S. Decl. ¶¶ 2, 19-20. Similar consequences await thousands of class members who will be processed and wrongfully denied an opportunity to seek asylum in light of the Rule. As the *East Bay* Court held, "the application of the Rule will result in the denial of meritorious claims for asylum that would otherwise have been granted. That means that persons who are being persecuted . . . , to whom the United States would otherwise have offered refuge, will be forced to return to the site of their persecution." *East Bay*, 2018 WL 6053140, at *18. The Government cannot seriously dispute that such consequences are severe and irreparable. *Id.; see also Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1504-05 (C.D. Cal. 1988) (summary removal to a dangerous country constitutes irreparable harm).

2. CAIR Coalition and RAICES Suffer Irreparable Injury to Their Organizational Missions, Resource Allocation, and Funding

The Rule also inflicts numerous additional irreparable harms on CAIR Coalition and

RAICES. As this and many other courts have recognized, policies making it "more difficult for [an organization] to accomplish [its] primary mission . . . provide injury for purposes [of] . . . irreparable harm." *Open Communities All. v. Carson*, 286 F. Supp. 3d 148, 177 (D.D.C. 2017); *see also, e.g.*, *Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718, 739 (S.D. Ind. 2016), *aff'd*, 838 F.3d 902 (7th Cir. 2016) (similar). In addition, the D.C. Circuit has held that an organization's expense of staff time and resources in responding to policy may be deemed an irreparable injury because "there can be no do over and no redress." *League of Women Voters*, 838 F.3d at 9 (internal quotation marks and citation omitted). CAIR Coalition and RAICES have experienced both of these types of irreparable harm as a result of the Rule.

Facilitating asylum applications for those who enter along the border with Mexico is a critical component of the mission of both CAIR Coalition and RAICES. *See supra* p. 9. CAIR Coalition provides this assistance in the Washington, D.C. area, while RAICES typically offers its services in Texas. Compl. ¶¶ 21-22; Cubas Decl. ¶¶ 3-4; Garza Pareja Decl. ¶ 4.

The Rule would interfere with this mission. CAIR Coalition would be wholly unable to assist the vast majority of individuals who enter the southern border outside of a port of entry because many of these individuals would be summarily deported before they even reach the D.C. metropolitan area. Compl. ¶ 138; Cubas Decl. ¶ 13. And both organizations would be limited in the number of asylum seekers they could serve—whether or not those individuals entered at ports of entry—due to the increased resources that would be required on a per-client basis to staff screening interviews and deportation proceedings under the new system imposed by the Rule, particularly in the detained cases that CAIR Coalition represents. Compl. ¶¶ 139, 163; Cubas Decl. ¶¶ 22-29, 34; Garza Pareja Decl. ¶¶ 17-19, 27, 31-32. For example, CAIR Coalition estimates that as a result of the Rule, its staff members would need to spend about double the

amount of time to prepare non-port of entry (non-POE) asylum seekers for credible fear interviews, cutting in half the number of such individuals that CAIR Coalition could serve, and that it would need to spend significantly more time preparing children—who pose special representation challenges—for formal asylum procedures. Compl. ¶ 144; Cubas Decl. ¶¶ 22-24, 31-34.

Moreover, the increased resources required to protect non-POE asylum seekers would require the organizations to divert time and resources from the provision of other services. Notably, while both organizations have previously relied on legal assistants, paralegals, and law students to accompany clients to their credible fear interviews, CAIR Coalition and RAICES anticipate that the Rule would require them to staff credible fear interviews with attorneys. Compl. ¶¶ 147-148, 167; Cubas Decl. ¶¶ 26-27; Garza Pareja Decl. ¶ 17. As a result, those attorneys would be unable to take on as many merits stage clients. Compl. ¶¶ 147, 167, 169; Cubas Decl. ¶ 26; Garza Pareja Decl. ¶ 19. Similarly, because children and spouses also are no longer eligible for derivative asylum consideration under the new policy, the organizations would need to spend additional resources on each member of a family. Compl. ¶¶ 154, 176; Cubas Decl. ¶ 35; Garza Pareja Decl. ¶ 30. And, in addition to these client-specific demands, the Rule would force the organizations to spend significant staff time analyzing the new policy, attempting to overhaul training materials, and designing new orientations and other client aids. Compl. ¶¶ 139-142, 149, 162, 166-167, 177; Cubas Decl. ¶¶ 15-17, 19, 28; Garza Pareja Decl. ¶¶ 6, 14, 17, 31.

These strains on the organization's resources would detract from the organizations' work on other initiatives, such as providing translations and conducting country conditions research. Compl. ¶ 151; Cubas Decl. ¶ 30. Additionally, the drain on resources would impede the

organizations' ability to represent individual clients throughout their entire immigration cases, creating a risk of irreparable reputational harm. Compl. ¶¶ 138, 145, 147, 150, 169-171; Cubas Decl. ¶¶ 14, 24, 26, 29, 38-39; Garza Pareja Decl. ¶¶ 19, 21-22, 33-35; *see, e.g.*, *Morgan Stanley DW, Inc.*, 150 F. Supp. 2d at 77-78 (D.D.C. 2001) (loss of "customer trust and goodwill" constituted irreparable harm); *Doe v. Trump*, 288 F. Supp. 3d 1045, 1083 (W.D. Wash. 2017) (refugee resettlement organizations faced irreparable harm under executive action restricting refugee admissions in part because of need to "adequately build programs to service other populations" and risk that "any sudden shift in the organizations' priorities will threaten their relationships and goodwill with community partners"). And, in CAIR Coalition's case, it may also jeopardize the organization's financial viability, because some of its funding is tied to the number of detained adults that CAIR Coalition represents at trial each year. Compl. ¶ 157; Cubas Decl. ¶ 38.

3. Plaintiffs Suffer Irreparable Harm from Defendants' Procedural Violations

In addition to all of these concrete harms, Plaintiffs have suffered irreparable injury through the Government's deprivation of the "procedural protection to which [they are] entitled" under the APA. *Sugar Cane Growers Coop. of Fla. v. Veneman*, 289 F.3d 89, 94-95 (D.C. Cir. 2002). Had the Government followed proper notice-and-comment procedures, CAIR Coalition and RAICES would have filed comments objecting to the Rule. Compl. ¶¶ 158, 178; Cubas Decl. ¶ 40; Garza Pareja Decl. ¶ 37. The deprivation of that opportunity is presumed to cause irreparable harm. *See N. Mariana Islands v. United States*, 686 F. Supp. 2d 7, 17 (D.D.C. 2009). Otherwise, as the D.C. Circuit has indicated, the APA's protections would be a "dead letter." *Sugar Cane Growers Coop.*, 289 F.3d at 95; *see N. Mariana Islands*, 686 F. Supp. 2d at 18-19 (if rule is allowed to go into effect for any significant period , the agencies will be "far less likely to

be receptive to comments" or subsequent policy changes, and plaintiffs "will never have an equivalent opportunity to influence the Rule's contents").

B. The Balance of Equities and the Public Interest Weigh in Favor of Injunctive Relief.

The public interest and the balance of the equities also favor entry of injunctive relief. There is always "a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken v. Holder*, 556 U.S. 418, 436. Temporary injunctive relief will immediately protect thousands of aliens from being improperly removed to countries in which they face a grave risk of harm. This Court has held that even the temporary denial of eligibility for parole determinations while in detention "constitutes serious potential damage" contrary to the public interest, weighing in favor of an injunction. *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 157. The exigencies facing putative class members, in the event that they are removed absent appropriate access to asylum procedures, are far greater here.

Furthermore, where Congress has made an entitlement clear by statute, the Court need look no further to determine where the public interest lies. *See, e.g.*, *League of Women Voters*, 838 F.3d at 13 (there is a "substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations"); *Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1326-27 (D.C. Cir. 1998) (the "public interest balance plainly would weigh in favor of an injunction" where an agency fails to adhere to statutory standards). Congress made clear in the INA that it is in the public interest for all noncitizens to have access to asylum procedures, whether or not they entered at a "designated port of arrival," and the follow the statute's other substantive and procedural mandates. 8 U.S.C. § 1158(a)(1). By the same token, the public interest is served "when administrative agencies comply with their obligations under the APA."

N. Mariana Islands, 686 F. Supp. 2d at 21.

On the other side of the scale, the burden of an injunction on the Government would be minimal. Defendants "cannot suffer harm from an injunction that merely ends an unlawful practice." *Open Communities All.*, 286 F. Supp. 3d at 179. Moreover, the Rule sharply departs from asylum policies that have been in effect for many years. The Government has identified no emergency compelling a sudden departure from those policies; on the contrary, the problem of illegal immigration that the rule purports to address has substantially *diminished* in recent years. *See supra* p. 5. Plaintiffs' requested preliminary injunction will "preserve, rather than alter, the status quo—that is, the 'last uncontested status which preceded the pending controversy.'" *Jacinto-Castanon de Nolasco v. U.S. Immigration & Customs Enf't,* 319 F. Supp. 3d 491, 498 (D.D.C. 2018) (quoting *Consarc Corp. v. U.S. Treasury Dep't of Foreign Assets Control*, 71 F.3d 909, 913 (D.C. Cir. 1995)).

III. Nationwide Injunctive Relief Is Appropriate.

This Court should issue nationwide relief and enjoin the application of the Rule and Proclamation to deny asylum anywhere. As the Supreme Court has made clear, "the scope of injunctive relief" must be "dictated by the extent of the violation established." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). When an Executive Branch policy contravenes a statute, it is invalid and should be struck down in its entirety. *See, e.g.*, *I.N.S. v. Nat'l Ctr. for Immigrants' Rights, Inc.*, 502 U.S. 183, 188 (1991) (a "regulation" that is "without statutory authority" is "facially invalid"); *Sullivan v. Zebley*, 493 U.S. 521, 536 n.18 (1990); *Nat'l Mining Ass'n v. U.S. Army Corps of Eng'rs*, 145 F.3d 1399, 1409-10 (D.C. Cir. 1998). Here, the policy of the Rule and Proclamation—to deny asylum categorically to any alien who enters between ports of entry—is flatly contrary to the INA and invalid in all applications, and should therefore be

enjoined in full. *See* 5 U.S.C. § 706(2); *East Bay*, 2018 WL 6053140, at *20.

Moreover, a nationwide injunction is particularly appropriate in the immigration realm. The Constitution requires a "*uniform* Rule of Naturalization." U.S. Const. art. I, § 8, cl. 4 (emphasis added). And Congress "has instructed that 'the immigration laws of the United States should be enforced vigorously and *uniformly*.'" *Texas v. United States*, 809 F.3d 134, 187-188 (5th Cir. 2014) (quoting Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 115(1), 100 Stat. 3359, 3384 (emphasis added)), *aff'd by equally divided Court*, 136 S. Ct. 2271 (2016) (per curiam). A narrower injunction would contravene those commands. Congress' "comprehensive and unified system" of immigration should not be splintered by narrow injunctions. *Arizona v. United States*, 567 U.S. 387, 401 (2012); *see NAACP v. Trump*, 298 F. Supp. 3d 209, 243 (D.D.C. 2018).

It would not make sense in this case to limit injunctive relief just to the named parties. As the D.C. Circuit has explained, "[t]raditional administrative law principles" counsel against the position that "named plaintiffs alone should be protected by the injunction." *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989). "When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed." *Id.* That is especially so in a putative class action, where members of the potential class would face severe hardship in the absence of broad preliminary relief. *See Rodriguez v. Providence Cmty. Corr., Inc.*, 155 F. Supp. 3d 758, 767 (M.D. Tenn. 2015) ("[A] district court may, in its discretion, award appropriate classwide injunctive relief prior to a formal ruling on the class certification issue based upon . . . its general equity powers." (internal quotation marks omitted)).

Further, in fashioning equitable relief, courts must take into account "what is workable."

North Carolina v. Covington, 137 S. Ct. 1624, 1625 (2017). Here, a narrower injunction would not be workable. Limiting relief to the Individual Plaintiffs would lead to thousands of additional suits seeking relief for similarly situated parties throughout the United States. As Judge Friendly noted, when a regulation is found to be unlawful, it would be "unthinkable" for executive officials to "insist on other actions being brought" over and over again. *See Vulcan Soc'y v. Civil Serv. Comm'n*, 490 F.2d 387, 399 (2d Cir. 1973); *see Nat'l Mining*, 145 F.3d at 1409 ("our refusal to sustain a broad injunction is likely merely to generate a flood of duplicative litigation"). Further, as Judge Tigar explained in *East Bay*, it is not clear how an injunction limited to the organizational plaintiffs "would work in practice," and "whether the clients of the Plaintiff firms would have special rights that other immigrants would not have." 2018 WL 6053140, at *20 n.21. In short, a narrow injunction would only sow chaos, unfairness, and inefficiency.[11]

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for a temporary restraining order should be granted, to be followed by a preliminary injunction.

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[11] If the Court finds the Rule unlawful solely on the ground that it violates the APA, the result would be the same. "Normally when an agency clearly violates the APA we would vacate its action." *Humane Soc'y of the U.S. v. Zinke*, 865 F.3d 585, 614 (D.C. Cir. 2017) (alterations omitted) (quoting *Sugar Cane Growers Coop.*, 289 F.3d at 97). That course is especially proper here. First, "vacatur would not trigger disruptive consequences." *Id.* at 615. Rather, it would simply require the Defendants to do what they have already been doing for years (and resumed doing after the injunction was issued in *East Bay*). Second, remanding without vacatur would be severely prejudicial to named plaintiffs and other similarly situated individuals. "A remand-only disposition is, in effect, an indefinite stay of the effectiveness of the court's decision and agencies naturally treat it as such." *Nat. Res. Def. Council v. EPA*, 489 F.3d 1250, 1262–64 (D.C. Cir. 2007) (Randolph, J., concurring). If this Court were to remand only, countless aliens could be removed to countries where they face grave danger or persecution on the basis of a policy that will ultimately prove illegal. Those severe humanitarian consequences militate strongly in favor of vacatur.

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Respectfully submitted,
HOGAN LOVELLS US LLP

By: 

Neal K. Katyal (Bar No. 462071)
T. Clark Weymouth (Bar No. 391833)
Craig A. Hoover (Bar No. 386918)
Justin W. Bernick (Bar No. 988245)
Colleen Roh Sinzdak* (Bar No. 1015344)
Zachary W. H. Best (Bar No. 1003717)
Mitchell P. Reich* (Bar No. 1044671)
Elizabeth Hagerty (Bar No. 1022774)
Kaitlin Welborn (Bar No. 88187724)
555 Thirteenth Street NW
Washington, DC 20004
Telephone: (202) 637-5600
Facsimile: (202) 637-5910
neal.katyal@hoganlovells.com
t.weymouth@hoganlovells.com
craig.hoover@hoganlovells.com
justin.bernick@hoganlovells.com
colleen.sinzdak@hoganlovells.com
zachary.best@hoganlovells.com
mitchell.reich@hoganlovells.com
elizabeth.hagerty@hoganlovells.com
kaitlin.welborn@hoganlovells.com

Thomas P. Schmidt*
875 Third Avenue
New York, NY 10022
Telephone: (212) 918-5547
Facsimile: (212) 918-3000
thomas.schmidt@hoganlovells.com

* *pro hac vice application forthcoming*

Counsel for Plaintiffs

Manoj Govindaiah
Curtis F.J. Doebbler*
RAICES, Inc.
1305 N. Flores Street
San Antonio, TX 78212
Telephone: (210) 222-0964
Facsimile: (210) 212-4856
manoj.govindaiah@raicestexas.org
curtis.doebbler@raicestexas.org

**pro hac vice application forthcoming*

Counsel for Plaintiff Refugee and Immigrant Center for Education and Legal Services, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

S.M.S.R., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Civil Action No. _____

PLAINTIFFS' CERTIFICATE OF COUNSEL
REGARDING COMPLIANCE WITH LOCAL RULE 65.1

Pursuant to Local Civil Rules 65.1 and 7(m) for the United States District Court for the District of Columbia, the undersigned hereby certifies as follows:

1. I am a partner at Hogan Lovells US LLP, 555 Thirteenth Street NW, Washington, D.C., 20004. I am counsel to Plaintiffs S.M.S.R., R.S.P.S., Capital Area Immigrants' Rights Coalition ("CAIR Coalition"), and Refugee and Immigrant Center for Education and Legal Services, Inc. ("RAICES").

2. I contacted counsel for Defendants by e-mail and telephone between approximately 2:00 and 3:00 PM on Monday, December 3, 2018, to inform them that Plaintiffs would be filing a complaint and motion for a temporary restraining order and/or a preliminary injunction on the same day. A schedule of the personnel contacted is listed below:

Defendant Officials and Agencies	Personnel Contacted
• Donald J. Trump • U.S. Department of Justice • Matthew Whitaker, Acting Attorney General of the United States • Executive Office for Immigration	• I spoke with Mr. Erez Reuveni, Assistant Director of the Office of Immigration Litigation, U.S. Department of Justice. • I separately followed up with an email

Review • James McHenry, Director of the Executive Office for Immigration Review	to Mr. Reuveni, Mr. Scott Stewart, Ms. Christina Greer, and Ms. Francesca Genova at the Department of Justice Office of Immigration Litigation.
• U.S. Department of Homeland Security • Kirstjen Nielsen, Secretary of Homeland Security • U.S. Immigration and Customs Enforcement • Ronald Vitiello, Acting Director of Immigration and Customs Enforcement • U.S. Customs and Border Protection • Kevin McAleenan, Commissioner of U.S. Customs and Border Protection • U.S. Citizenship and Immigration Services • Lee Francis Cissna, Director of U.S. Citizenship and Immigration Services	• I left a voicemail for John Mitnick, General Counsel of the U.S. Department of Homeland Security. • I separately followed up with an email to Mr. Mitnick and Ms. Kirstjen Nielsen at the Department of Homeland security.

3. In my telephone call with Mr. Reuveni and my email communications, I advised counsel for Defendants that Plaintiffs are requesting that the Court set a hearing on Plaintiffs' request for a temporary restraining order for December 17, 2018, and requested that the parties meet and confer promptly on a briefing schedule. Mr. Reuveni committed to responding to our request on behalf of Defendants promptly.

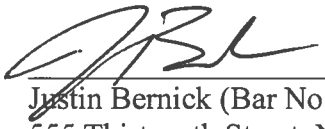
4. As soon as possible this afternoon, we will be sending Defendants by email, hand delivery, or certified mail copies of all of the papers Plaintiffs are submitting in connection with their request for a temporary restraining order and/or a preliminary injunction, including the Complaint, Plaintiffs' Motion for Leave to File Under Pseudonyms, the civil cover sheet, Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction ("TRO Motion"), the Memorandum in Support of Plaintiffs' TRO Motion, the Motion for Expedited

Hearing on Plaintiffs' TRO Motion, the accompanying declarations, and Plaintiffs' proposed temporary restraining order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 3, 2018, in the District of Columbia.

HOGAN LOVELLS US LLP



Justin Bernick (Bar No. 988245)
555 Thirteenth Street, NW
Washington, D.C. 20004
Telephone: 202-637-5600
Facsimile: 202-637-5910
justin.bernick@hoganlovells.com

Counsel to Plaintiffs

Exhibit 1

DECLARACIÓN DE S.M.S.R.

I, [redacted], declaro y el estado de conformidad con 28 USC § 1746:

1. Mi nombre es [redacted]. Nací en Honduras. Mi lengua materna es el español. Los hechos de esta declaración se basan en mi propio conocimiento personal, y podría testificar de manera competente a las materias contenidas en este documento si se pide que lo haga. Presento esta declaración jurada en apoyo del movimiento de los demandantes para la orden de restricción temporal.

2. El nombre de mi hijo es [redacted]. Nació en Honduras, y tiene 14 años. Huí Honduras con mi hijo durante los primeros días de octubre de 2018 porque temía por mi vida y por la vida de mi hijo.

3. Mi objetivo era y sigue siendo obtener asilo para mi hijo y para mí en los Estados Unidos, en la que podemos estar seguros.

4. Mi hijo y yo tuvimos que huir de Honduras porque temía que la MS-13 nos mataría. Durante los últimos ocho meses, MS-13 ha amenazado con matar a mi hijo y a mí si no aceptaba vivir con ellos y ser "esposa" de la banda.

5. Los miembros de la banda también han amenazado con matarnos si mi hijo no se une a la MS-13. Nos han amenazado cuatro o cinco veces en esta forma durante los últimos ocho meses.

6. Miembros de la pandilla MS-13 me dijeron que tenía que ser una de sus mujeres y vivir con ellos. Me negué, y les dije que, porque soy cristiana evangélico, mi religión no permitiría hacer tal cosa.

7. Miembros de las pandilla venían a mi casa casi todos los días a amenazarme, pero cerraba la puerta y les decía que se fueran. Lloraba mientras me gritaban y amenazaban. Ellos

dijeron que tenía que ser su mujer o a lo contrario, matarían a mi hijo y yo. También me dijeron que no podía ir a ninguna parte, porque nos encontrarían y nos matarían en cualquier parte del país.

8. Cuando me negué a ser la mujer de la banda, me dijeron que la decisión últimamente era suya, y que solo me daban la oportunidad de aceptar de buen grado.

9. Temo que si regreso a Honduras van a seguir adelante con sus amenazas de encontrarme y matarme a mí y mi hijo.

10. MS-13 ha hecho daño físicamente a mi hijo tres veces. Estos ataques se iniciaron hace unos ocho meses.

11. La primera vez, la MS-13 arrojó una piedra a mi hijo. Ahora tiene una cicatriz en su mano.

12. La segunda vez, la MS-13 envió adolescentes a la escuela de mi hijo para reclutar a mi hijo. Los jóvenes le dijeron que estaban en la MS-13. Le dijeron a mi hijo que tenía que unirse a la MS-13, fumas drogas, golpear y matar a la gente, y hacer lo que sea que ellos digan.

13. Mi hijo se negó a unirse a la banda ya que teme a Dios y ama a su familia. Cuando se negó a unirse a la banda o hacer lo que decían, los miembros de la banda lo golpearon. Ellos lo golpearon en el ojo.

14. Un mes siguiente, los mismos del MS-13 que lanzaron la roca hacia mi hijo regresaron y otra vez le preguntaron a unirse a la banda. Cuando mi hijo se negó, lo atacaron. El pecho y brazo de mi hijo estaban cubiertos en moretones después de este ataque.

15. A pesar de que mi hijo se negó a unirse a la MS-13, los jóvenes que lo golpearon hasta le dijeron que no era decisión de él si él se uniría a la MS-13. Le dijeron que lo iban a secuestrar de nuestra casa y obligarlo a unirse, o de lo contrario lo matarían a él y a mí.

16. Jamás reporte ninguno de estos ataques o amenazas a la policía, porque sé que la policía no puede ni quiere protegerme a mi o mi hijo.

17. La policía trabaja con la MS-13. Lo sé porque la policía saluda a miembros conocidos de la banda de manera amigable. Yo personalmente he visto el saludo de la policía hacia miembros de la banda de una manera amigable en numerosas ocasiones.

18. Por ejemplo, miembros de la banda se sitúan en una esquina de la calle para controlar quién entra y sale de la calle. Si la policía camina por la calle, la policía y los miembros de la banda intercambian saludos amistosos. Esto sucede casi todos los días de la semana.

19. MS-13 paga a la policía para asegurarse de que la policía no ira tras sus miembros. Hace unos tres o cuatro meses, vi un coche oscuro pasar por mi casa temprano en la mañana. La policía llegó y le dijo a los hombres que salgan del coche. Esos hombres son conocidos en mi comunidad por ser miembros de la banda. Los hombres le dieron dinero a la policía, regresaron en el coche, y se fueron.

20. Muchos de mis vecinos creen que la policía trabaja con la MS-13. Uno de mis vecinos informaron a la policía que su marido, un miembro de la banda, le había pegado. La policía no hizo nada al respecto. Otros vecinos dijeron que la policía había dicho que ella seguro lo provoco.

21. También sé que la policía trabaja con la MS-13 porque la gente en nuestra comunidad aparecen muertos y la policía no hace nada al respecto.

22. Por ejemplo, una mujer fue recientemente quemada cerca de los acantilados por mi casa. Muchos vecinos dijeron que la banda lo hizo, pero la policía hizo nada al respecto.

23. Otras mujeres de manera similar han sido quemadas a la muerte por MS-13 cerca de mi pueblo, y la policía nunca ha hecho algo al respecto.

24. Muchos jóvenes en Honduras están amenazados por la MS-13. Se les dice que tienen que unirse a la banda o los mataran. Varios niños de mi barrio han sido golpeados porque se negaron a fumar drogas o unirse a la banda.

25. Por ejemplo, miembros de la MS-13 agarraron a un niño de la edad de mi hijo en la calle. Le ofrecieron marihuana. Lo golpearon y lo obligaron a fumar la marihuana. El niño fue golpeado de forma tan brutal que todos en el vecindario dijeron que tenía que ir al hospital.

26. Mi hijo y yo no podemos reubicarnos a otro sitio en Honduras porque la MS-13 nos encontraría y nos matarían, como han prometido hacerlo, tanto cuando me dijeron que tenía que ser su mujer y cuando mi hijo se negó unirse a la banda. Los miembros de la banda me dijeron que no podía ir a ninguna parte, ya que me encontrarían. Miembros de la banda ya tomaron fotos de mí, para que sepan cómo luzco.

27. La MS-13 tiene contactos en todas partes de Honduras, no sólo en mi pueblo. Aunque mi madre vive en otra parte del país, la MS-13 está en esa ciudad también. La reubicación no es opción. Yo sé que la única forma de estar realmente segura es irme de Honduras.

28. Mi hijo y yo salimos de Honduras a principios de octubre 2018, el día después de la última vez que la MS-13 atacaron a mi hijo por negarse a unirse a la banda.

29. Amigos y otras personas me habían dicho que buscar asilo en México sería imposible. No pague por transporte a través de un contrabandista o un coyote, pero me sentí insegura en numerosas ocasiones mientras mi hijo y yo viajábamos a través de México.

30. Entré en los Estados Unidos sin inspección el sábado 10 de noviembre 2018, cerca del puerto de entrada de Piedras Negras.

31. Había oído que cruzar a los Estados Unidos a través de un puerto de entrada sería difícil y veía un gran número de funcionarios de inmigración de Estados Unidos en la puente y a su alrededor. Ante el temor de que seríamos incapaces de llegar a los Estados Unidos a través del puerto de entrada, nade por el Río Grande con mi hijo. Fuimos aprehendidas rápidamente por los funcionarios de inmigración de Estados Unidos al salir del río.

32. El 16 de noviembre 2018, en el centro de detención en Dilley, Texas, tuve una orientación. Durante la orientación, me proporcionaron un poco de información acerca de lo que era una entrevista de miedo creíble. Entendí que esto significaba que sería autorizada a solicitar asilo, y que mi hijo y yo no tuviéramos que ir de vuelta a Honduras si los funcionarios le parece que tenía un temor creíble al regresar a Honduras.

33. Fui entrevistada por un oficial de asilo el 19 de noviembre de 2018. Al inicio de la entrevista, el funcionario de asilo explicó lo que era una entrevista de miedo creíble. El funcionario de asilo me hizo algunas preguntas sobre mis antecedentes.

34. El funcionario de asilo preguntó cuándo y cómo entre a los Estados Unidos. Le dije que había entrado por el río el 10 de noviembre y fui capturada inmediatamente por las autoridades de inmigración de los Estados Unidos.

35. A continuación, el funcionario de asilo me dijo que había entrado en los Estados Unidos de manera ilegal, sin presentarme adecuadamente en un puerto de entrada, y que no era elegible para el asilo basado en una proclama presidencial.

36. No entendía que era la proclama presidencial que el funcionario de asilo me estaba hablando.

37. El funcionario de asilo también dijo que yo no era elegible para una entrevista de miedo creíble, y que el propósito del resto de la entrevista fue determinar si tuviera un temor razonable de persecución o tortura.

38. Yo estuve confundida acerca de lo que es un temor razonable y cómo esto se diferenciaba de lo que el funcionario de asilo había dicho antes sobre el miedo creíble. Me dijeron durante mi orientación que podía permanecer en los Estados Unidos y solicitar asilo si tuviera un temor creíble sobre mi seguridad al regresar a Honduras. No recibí orientación sobre lo que es una entrevista de temor razonable o porque no podía solicitar asilo en los Estados Unidos.

39. Si regreso a Honduras, temo futuro persecución para mi hijo y para mí en la forma de muerte o tortura por parte de la MS-13.

40. Mi temor se basa en nuestras experiencias ya: he sentido la persecución en forma de amenazas de muerte de la MS-13 a causa de mi relación familiar con mi hijo, que se negó a unirse a la banda. Mi hijo ha recibido amenazas de muerte y ha sido atacado físicamente por la MS-13 a causa de su relación familiar a mí, porque me negaba a vivir con la banda como su esposa.

41. Mi hijo negó la demanda de la MS-13 para unirse a la banda, y yo negué la demanda de la MS-13 para vivir como su esposa, sobre la base de nuestras creencias evangélicas.

42. Yo sé que la policía no nos protegerá, porque he visto que reciben sobornos de los miembros de la banda, saludan a miembros de bandas como amigos, e ignoran múltiples informes de hombres jóvenes amenazados y perjudicados y las mujeres quemadas por no unirse a las bandas.

43. Espero que seré capaz de presentar mi solicitud de asilo. Los Estados Unidos es donde mi hijo y yo podemos estar libre de temor a la persecución y la violencia.

Declaro bajo pena de perjurio bajo las leyes de los Estados Unidos de América, que lo anterior es verdadero y correcto.

Ejecutado este día 1st de December, 2018, en [redacted],
[redacted].

[redacted]

DECLARATION OF S.M.S.R.

I, [redacted], declare and state pursuant to 28 U.S.C. § 1746:

1. My name is [redacted]. I was born in Honduras. My native language is Spanish. The facts in this declaration are based on my own personal knowledge, and I could and would competently testify to the matters contained herein if called upon to do so. I submit this sworn declaration in support of Plaintiffs' Motion for Temporary Restraining Order.

2. My son's name is [redacted]. He was born in Honduras, and he is 14 years old. I fled Honduras with my son during the first few days of October 2018 because I feared for my life and for my son's life.

3. My goal was and remains to obtain asylum for my son and me in the United States, where we can be safe.

4. My son and I had to flee Honduras because I feared that MS-13 would kill us. During the past eight months, MS-13 has threatened to kill my son and me if I would not live with them and accept being their gang "wife."

5. The gang members also have threatened to kill my son and me if my son does not join MS-13. They have threatened us four or five times in this way during the past eight months.

6. MS-13 gang members told me that I had to be one of their women and live with them. I refused, and told them that, because I am an Evangelical Christian, my religion would not permit me to do such a thing.

7. Gang members would come to my house nearly every day to threaten me, but I locked the door and told them to go away. I would cry as they would yell at me and threaten me. They said that I needed to be their woman or else they would kill my son and me. They also told me that I could not go anywhere, because they would find us and kill us anywhere in the country.

8. When I refused to be the gang's woman, they told me that the decision was ultimately theirs to make, and that they were just giving me a chance to accept willingly.

9. I fear that if I return to Honduras they will follow through with their threats to find me and kill my son and me.

10. MS-13 has physically hurt my son three times. These attacks started about eight months ago.

11. The first time, MS-13 members threw a rock at my son. He now has a scar on his hand.

12. The second time, MS-13 sent teenagers at my son's school to recruit my son. The young men told him that they were in MS-13. They told my son that he had to join MS-13, smoke drugs, beat up and kill people, and do whatever they said.

13. My son refused to join the gang because he fears God and loves his family. When he refused to join the gang or do what they said, the gang members beat him up. They punched him in his eye.

14. About a month later, the same MS-13 members who threw the rock approached my son and again asked him to join the gang. When my son refused, they attacked him. My son's chest and arm were covered with bruises after this attack.

15. Even though my son refused to join MS-13, the young men who beat him up told him that it was not up to him whether he would join MS-13. They told him that they would kidnap him from our house and force him to join, or else they would kill both him and me.

16. I never reported any of these attacks or threats to the police, because I know that the police cannot and will not protect my son or me.

17. The police work with MS-13. I know this because the police greet known gang members in a friendly way. I personally have seen the police greet known gang members in a friendly way on numerous occasions.

18. For example, gang members stand at one street corner to control who enters and exits the street. If the police walk down the street, the police and the gang members would exchange friendly greetings. This would happen almost every day of the week.

19. MS-13 pays the police to make sure that the police do not go after their members. About three or four months ago, I saw a dark car pass by my house in the early morning. The police arrived and told the men to get out of the car. Those men are known in my community to be gang members. The men gave the police money, got back in the car, and left.

20. Many of my neighbors believe that the police work with MS-13. One of my neighbors reported to the police that her husband, a gang member, had beaten her up. The police never did anything about it. Other neighbors said that the police had said that she asked for it.

21. I also know that the police work with MS-13 because people in our community turn up dead and the police would not do anything about it.

22. For example, a woman was recently burned near the cliffs close to my house. Many neighbors said that the gang did it, but the police did not do anything about it.

23. Other women similarly have been burned by MS-13 near my town, and the police have never done anything about it.

24. Many young people in Honduras are threatened by MS-13. They are told that they have to join the gang or be killed. Several children in my neighborhood have been beaten up because they refused to smoke drugs or join the gang.

25. For example, MS-13 gang members grabbed a boy around my son's age on the street. They offered him marijuana. They beat him up and forced him to take the marijuana. The child was beaten up so badly that everyone in the neighborhood said that he had to go to the hospital.

26. My son and I cannot relocate anywhere else in Honduras because MS-13 would find us and kill us, as they have promised to do, both when they said I had to be their woman and when my son would not join the gang. The gang members told me that I could not go anywhere because they would find me. Gang members already took pictures of me, so they know what I look like.

27. MS-13 has contacts everywhere in Honduras, not just my town. Although my mother lives in another part of the country, MS-13 is in that town as well. Relocating is not an option. I know that the only way to be truly safe is to leave Honduras.

28. My son and I left Honduras in early October 2018, the day after the last time MS-13 attacked my son for refusing to join the gang.

29. Friends and others had told me that seeking asylum in Mexico would be impossible. We did not pay for transport through a smuggler or coyote, but I felt unsafe on numerous occasions while my son and I were traveling through Mexico.

30. I entered the United States without inspection on Saturday, November 10, 2018 near the Piedras Negras port of entry.

31. I had heard that crossing into the United States through a port of entry would be difficult and saw large numbers of U.S. immigration officials on and around the bridge. Fearing that we would be unable to reach the United States through the port of entry, I instead swam

across the Rio Grande with my son. We were quickly apprehended by U.S. immigration officials as we got out of the river.

32. On November 16, 2018, at the detention center in Dilley, Texas, I had an orientation. During the orientation, I was provided with some information about what a credible fear interview was. I understood this to mean that I would be permitted to apply for asylum, and that my son and I would not be sent back to Honduras if the officials found that we had a credible fear of returning to Honduras.

33. I was interviewed by an Asylum Officer on November 19, 2018. At the beginning of the interview, the Asylum Officer explained what a credible fear interview was. The Asylum Officer asked me a few questions about my background.

34. The Asylum Officer asked when and how I entered the United States. I said that I had entered through the river on November 10 and was caught by U.S. immigration officials right away.

35. Then the Asylum Officer said that I had entered the United States illegally without properly presenting myself at a port of entry, and that I was ineligible for asylum based on a presidential proclamation.

36. I did not understand what presidential proclamation the Asylum Officer was talking about.

37. The Asylum Officer also said that I was not eligible for a credible fear interview, and that the purpose of the rest of the interview was to determine if I had a reasonable fear of persecution or torture.

38. I was confused about what a reasonable fear was and how this was different from what the Asylum Officer had said before about credible fear. I was told during my orientation

that I could stay in the United States and apply for asylum if I had a credible fear for my safety of returning to Honduras. I did not receive any orientation on what a reasonable fear interview was or why I could not apply for asylum in the United States.

39. If I return to Honduras, I fear future persecution for my son and me in the form of death or torture by MS-13.

40. My fear is grounded in our experiences already: I experienced persecution in the form of death threats from MS-13 on account of my family relationship to my son, who refused to join the gang. My son has experienced death threats and has been physically attacked by MS-13 on account of his family relationship to me, because I refused to live with the gang as their wife.

41. My son refused MS-13's demand to join the gang, and I refused MS-13's demand to live as their wife, on the basis of our Evangelical beliefs.

42. I know that the police will not protect us, because I have seen them receive bribes from gang members, greet gang members as friends, and ignore multiple reports of young men being threatened and harmed and women being burned for not joining the gangs.

43. I hope that I am able to present my application for asylum. The United States is where my son and I can be free from fear of persecution and violence.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of December, 2018, in [redacted], [redacted].

[redacted]

CERTIFICATION BY TRANSLATOR

I certify that I am fluent in both the English and Spanish languages and that the attached translation of the accompanying Declaration of [redacted] is a true and correct translation of the original.

Melissa Pérez
Name of Translator

melissa.perez@hugomonelle.com
Email Address

305.842.1980
Phone Number

Signature

12.3.18
Date

Exhibit 2

DECLARACIÓN DE R.S.P.S.

Yo, [redacted], declaro y afirmo con conformidad al 28 USC § 1746:

1. Tengo catorce años. Mi lengua materna es el español. Los hechos de esta declaración se basan en mi propio conocimiento personal, y podría testificar de manera competente a las materias contenidas en este documento si se le pide que lo haga. Presento esta declaración jurada en apoyo del movimiento de los demandantes para la orden de restricción temporal.

2. Yo vivía con mi madre en Honduras hasta hace unos dos meses. Nos fuimos de Honduras después de que fuimos amenazados por miembros de la banda MS-13. Hay miembros de la banda en todas partes de Honduras, y me amenazaron con matar a mi madre si no me unía a su banda. Temo por nuestras vidas si volvemos a Honduras.

3. Miembros de la pandilla MS-13 me golpearon en tres diferentes ocasiones y amenazaron con matarme a mí y a mi madre en esas y otras ocasiones.

4. Los miembros de la pandilla MS-13 me hacían daño, porque yo no quería unirme a su banda. Me dijeron que para unirse a su banda, tendría que usar drogas y pegar y matar a la gente. Yo no quería hacer esas cosas. Les dije a los miembros de la banda que esas son cosas malas que mi familia no hace.

5. Soy un cristiano evangélico y creo en Dios, así que no puedo hacer las cosas que los miembros de la banda quería que hiciera.

6. Hace unos meses, miembros de la banda MS-13 de mi edad se acercaron a mí y me pidieron que me uniera a la banda por primera vez. Cuando dije que no, arrojaron una piedra hacia mí y me golpeó en la mano. Ahora tengo una cicatriz en mi mano.

7. Pocos días después de eso, yo salía de la escuela y la banda envió tres niños mayores a pegarme. Me golpearon en el ojo con sus puños cerrados.

8. Al día siguiente, enviaron más miembros de la banda a lastimarme. Esa vez, me dieron patadas a las piernas y el estómago.

9. Cada vez que los miembros de la banda me atacaron, me dijeron que era porque no quería unirme a su banda. Ellos decían que iban a matar a mi madre y a mí. Estaba muy asustado.

10. Yo sabía que los miembros de la banda que me atacaron estaban en MS-13 porque tenían tatuajes que decían MS y 13. Muchos miembros de la banda en el barrio tienen estos tatuajes.

11. Unos días siguientes, miembros de la banda me encontraron en una tienda. Ellos dijeron que la próxima vez que me vieran que no me advertirían, y que acabarían de matarme a mí y a madre.

12. Mi madre y yo teníamos tanto miedo de ellos que nos fuimos de Honduras al día siguiente.

13. Durante muchos meses antes de salir, miembros de la banda también venían a nuestra casa y amenazar a mi madre por no ser su mujer. Venían casi todos los días a pedir a mi mamá a ser su mujer, pero mi madre les decía que no y cerraba la puerta. Eso sólo hizo que los miembros de la banda se enfadaran y nos amenazaban más todavía. Cuando los miembros de la banda me amenazaban, a veces me decían que querían matarnos porque mi madre no quería ser su mujer.

14. Estas amenazas aterrorizan tanto a mi madre y yo. La banda me ha herido y ha perjudicado a otras personas en la ciudad. Uno de mis compañeros de clase dejaron Honduras

por causa de la MS-13. Un día me dijo que la MS-13 mató a su padre porque su padre se negó a que mi amigo se une a la banda. El día después de que su padre fue asesinado, mi compañero salió de Honduras con su abuela.

15. Nunca le informamos a la policía lo que había pasado entre la banda MS-13 y nosotros, ya que ellos no ayudan a la gente. Las bandas gobiernan la policía, por lo que la policía no hace nada. Personas mueren en mi barrio y la policía nunca llega. Una vez, oí disparos y mataron a alguien cerca de mi casa, y la policía nunca llegó. Vi al hombre muerto en el suelo. Nuestros vecinos dijeron que las bandas lo habían matado.

16. En otra ocasión, una mujer nos dijo que la MS-13 mató a su hija. Le deformaron la cara y le cortaron las manos, echando las manos en la casa de la madre. La policía hizo nada.

17. En las noticias, vi que la policía de Honduras una vez mató a un niño con una pistola. Todo el mundo se pregunta por qué la policía está matando en lugar de ayudarnos.

18. La policía de Honduras actúan como si son ciegos si ven miembros de la banda. Un día, vi a la gente beber y fumar drogas y la policía les pasaron por al lado, pero hicieron nada al respecto.

19. Dejamos Honduras porque no estamos seguros allí. Hay bandas en todas partes de Honduras. MS-13 tiene contactos en toda Honduras, y ya han tomado fotos de mi madre.

20. Llegamos a los Estados Unidos porque este es el único lugar donde podemos estar seguros. Me temo que mi madre y yo moriremos si nos vemos obligados a regresar a Honduras.

Declaro bajo pena de perjurio bajo las leyes de los Estados Unidos de América, que lo anterior es verdadero y correcto.

Ejecutado este día 1st de December 2018, en [redacted],
[redacted].

[redacted]

DECLARATION OF R.S.P.S.

I, [redacted], declare and state pursuant to 28 U.S.C. § 1746:

1. I am fourteen years old. My native language is Spanish. The facts in this declaration are based on my own personal knowledge, and I could and would competently testify to the matters contained herein if called upon to do so. I submit this sworn declaration in support of Plaintiffs' Motion for Temporary Restraining Order.

2. I lived with my mom in Honduras until about two months ago. We left Honduras after we were both threatened by gang members from MS-13. There are gang members everywhere in Honduras, and they threatened to kill me and my mom if I did not join their gang. I fear for our lives if we return to Honduras.

3. MS-13 gang members hit me three different times and threatened to kill me and my mom on those and other occasions.

4. The MS-13 gang members hurt me because I did not want to join their gang. They said that to join their gang, I would have to use drugs and beat up and kill people. I did not want to do these things. I told the gang members that these are bad things that my family does not do.

5. I am an Evangelical Christian and believe in God, so I cannot do the things the gang members wanted me to do.

6. A few months ago, MS-13 gang members my age first approached me and asked me to join the gang. When I said no, they threw a rock at me and hit me on the hand. Now I have a scar on my hand.

7. A few days after that, I was leaving school and the gang sent three older kids to hit me. They hit me in the eye with their closed fists.

8. The next day, they sent more gang members to hurt me. That time, they kicked my legs and my stomach.

9. Every time the gang members attacked me, they told me it was because I did not want to join their gang. They would say that they were going to kill my mom and me. I was very scared.

10. I knew the gang members who attacked me were in MS-13 because they had tattoos that said MS and 13. Many gang members in the neighborhood have these tattoos.

11. A few days later, gang members found me at a store. They said that the next time they saw me they would not warn me, and they would just kill my mom and me.

12. My mom and I were so scared of them that we left Honduras the next day.

13. For many months before we left, gang members also would come to our house and threaten my mom for not being their woman. They would come nearly every day and ask my mom to be their woman, but my mom would say no and would lock the door. That only made the gang members mad and made them threaten both of us. When the gang members threatened me, they sometimes would say they wanted to kill us because my mom would not be their woman.

14. These threats terrify both my mom and me. The gang has hurt me and has hurt other people in town. One of my classmates left Honduras because of MS-13. One day he told me that MS-13 killed his father because his father refused to let my friend join the gang. The day after his father was murdered, my classmate left Honduras with his grandma.

15. We never reported any of what happened to my mom or me to the police in Honduras, because they do not help people. The gangs rule the police, so the police do nothing. People are killed in my neighborhood and the police never come. One time, I heard gunshots

and somebody was killed near my house, and the police never came. I saw the man dead on the ground. Our neighbors said that the gangs had killed him.

16. Another time, a woman told us that MS-13 killed her daughter. They deformed her face and cut off her hands and threw the hands at the mother's house. The police never did anything.

17. On the news, I saw that police in Honduras once killed a boy with a gun. Everyone was asking why the police are killing instead of helping us.

18. The police in Honduras act like they are blind if they see gang members. One day, I saw people drinking and smoking drugs and police passed by and saw but didn't do anything.

19. We left Honduras because we are not safe there. There are gangs everywhere in Honduras. MS-13 has contacts all over Honduras, and they already have taken photos of my mom.

20. We came to the United States because this is the only place where we can be safe. I'm afraid that my mom and I will die if we are forced to return to Honduras.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of December, 2018, in [redacted], [redacted].

[redacted]

CERTIFICATION BY TRANSLATOR

I certify that I am fluent in both the English and Spanish languages and that the attached translation of the accompanying Declaration of [redacted] is a true and correct translation of the original.

Melissa Pérez
Name of Translator

melissa.perez@hoganlovells.com
Email Address

305.842.1980
Phone Number

Signature

12.3.18
Date

Exhibit 3

DECLARATION OF CLAUDIA CUBAS

I, Claudia Cubas, declare under penalty of perjury as prescribed in 28 U.S.C. § 1746:

1. The facts contained in this declaration are known personally to me and, if called as a witness, I could and would testify competently thereto under oath. I submit this sworn declaration in support of Plaintiffs' Motion for Temporary Restraining Order.

2. I serve as the Litigation Director for the Capital Area Immigrants' Rights Coalition ("CAIR Coalition"), an organizational plaintiff in this action. Prior to serving as Litigation Director, I was the Senior Program Director for the Detained Adult Program at CAIR Coalition. I worked for CAIR Coalition since 2011. I manage and coordinate litigation across the organization, involving issues related to access to justice, detention, and eligibility for relief for children and adults who are detained by U.S. Immigration and Customs Enforcement ("ICE").

3. CAIR Coalition is a 501(c)(3) nonprofit organization headquartered in Washington, D.C.

4. CAIR Coalition is the only organization dedicated to providing legal services to immigrant men, women, and children who are detained by ICE or the Office of Refugee Resettlement ("ORR") in Virginia and Maryland. CAIR Coalition strives to ensure equal justice for all migrant men, women, and children at risk of detention and deportation in the Washington, D.C. metropolitan area and beyond.

5. CAIR Coalition is comprised of three main programs: the Detained Adult Program, the Detained Children's Program, and the Immigration Impact Lab. The Detained Adult Program helps detained migrants learn to understand the Immigration Court and deportation process so they can make better-informed decisions about their cases. CAIR

Coalition also represents detained clients and refers clients to pro bono attorneys if they are unable to pay counsel to represent them.

6. The Detained Adult Program has four main work components: (1) providing educational services in the form of "know your rights" presentations, conducting individual consultations (intakes), and conducting *pro se* workshops with unrepresented detained noncitizens in the custody of ICE at facilities located in Virginia and Maryland; (2) connecting unrepresented detained migrants who cannot afford a lawyer with pro bono attorneys from CAIR Coalition's various pro bono partners; (3) representing detained immigrants found legally incompetent while appearing *pro se* before an immigration judge as part of the National Qualified Representative Program ("NQRP"); and, as the newest component, (4) providing in-house direct representation to indigent immigrants throughout the course of their removal proceedings.

7. The Detained Children's Program has three main work components: (1) providing educational services in the form of "know your rights" presentations and conducting individual consultations (intakes) with unrepresented detained noncitizens in the custody of ORR at facilities located in Virginia and Maryland; (2) connecting unrepresented detained immigrants who cannot afford a lawyer with pro bono attorneys from CAIR Coalition's various pro bono partners; and, (3) providing in-house direct legal representation to indigent immigrants throughout the course of their removal proceedings.

8. With respect to asylum, CAIR Coalition focuses on defensive asylum applications, as all of CAIR Coalition's clients are in active removal proceedings.

9. Asylum applications represent a vital component of CAIR Coalition's organizational mission and account for much of the services we provide to detained immigrants.

10. CAIR Coalition interacts with hundreds of immigrants seeking asylum who entered the U.S. at the southern border in places other than ports of entry ("non-POE asylum seekers") each year. For example, at the Ordnance Road detention facility in Anne Arundel County, Maryland, CAIR Coalition estimates that approximately 100 of the 130 potential adult detainees at any given time typically are non-POE asylum seekers. In the Caroline County, Virginia detention facility, CAIR Coalition estimates that approximately 70 of the 120 potential adult detainees at any given time typically are non-POE asylum seekers

11. Further, of the approximately 167 immigrant children's case on which CAIR Coalition provided direct legal or pro bono placement services from January 1, 2017, to November 30, 2018, over a third included viable asylum claims. The majority of these children did not enter the United States at a port of entry.

12. New rules and caselaw issued by former Attorney General Sessions in 2017 and 2018 have made Special Immigrant Juvenile Status ("SIJS") a more difficult path for children to seek relief from removal. Due to this, children with factual backgrounds that support both SIJS and asylum claims are now more apt to seek asylum or both, whereas in the past SIJS was more prevalent.

13. The Interim Rule challenged in the Complaint, *see Aliens Subject to a Bar on Entry under Certain Presidential Proclamations; Procedures for Protection* Claims, 83 Fed. Reg. 55,934 (Nov. 9, 2018), and the "Presidential Proclamation Addressing Mass Migration Through the Southern Border of the United States" (Nov. 9, 2018), *available at* https://goo.gl/tXz6xs ("the Proclamation"), would irreparably harm CAIR Coalition in multiple ways absent enjoinder of the Interim Rule, including by frustrating CAIR Coalition's mission to serve as many detained immigrants lawfully seeking asylum as possible. If fewer non-POE

asylum seekers are able to reach the Washington, D.C. area, CAIR Coalition would face a drastic reduction in its client base.

14. The Interim Rule and Proclamation would also significantly limit the overall number of clients CAIR Coalition serves, whether or not those clients entered at a port of entry. Because CAIR Coalition must create costly new resources and procedures under the Interim Rule and Proclamation, it cannot serve as many individuals. The Interim Rule and Proclamation would put the organization in an impossible position: it must raise more funds to serve the same number of clients, or reduce the number of clients it serves to fit within the current budget.

15. CAIR Coalition would be forced to divert significant staff resources to analyzing and interpreting the Interim Rule and Proclamation, overhauling its client information database, and preparing new informational and advocacy materials.

16. For example, as soon as the Interim Rule and Proclamation were announced, I developed a flow chart to distinguish the various paths to immigration relief for non-POE asylum seekers, asylum seekers who entered at a port of entry, unaccompanied minors, and asylum seekers who entered prior to the effective date of the policy. This single-page sheet took me a day to complete—a day that I could not spend serving individual clients.

17. Under the Interim Rule and Proclamation, CAIR Coalition must develop new materials and procedures for jail visits specifically for non-POE asylum seekers. Traditionally, CAIR Coalition provided one orientation for all detainees, regardless of how they entered the country. But under the Interim Rule and Proclamation, CAIR Coalition must prepare separate orientations for non-POE adult asylum seekers to explain the different standard for their credible fear interview and the limited forms of relief available. CAIR Coalition would also need to prepare a new set of orientation materials for non-POE children seeking asylum.

18. Under the Interim Rule and Proclamation, CAIR Coalition's staff would spend substantial resources identifying and sorting non-POE asylum seekers subject to the Interim Rule and Proclamation from other asylum seekers (i.e., those who entered at a port of entry and those who entered prior to the effective date for the Interim Rule and Proclamation). Unlike organizations at the southern border who primarily serve clients who are detained after apprehension at the border, CAIR Coalition serves clients who are placed in detention following a variety of scenarios, including entering the country at the southern border, being apprehended in the interior of the United State, or entering the country at ports of entry at the three major international airports in the Washington, D.C. area.

19. CAIR Coalition also must develop materials for this new orientation, train its staff on the new orientation, exert double staff time to conduct two orientations rather than one for children and adults, and spend more staff time on the longer, more complicated dual orientations. Simply updating CAIR Coalition's client database to include information relevant to asylum eligibility under the Interim Rule and Proclamation, for example, would take between three to five days of a staff member's time.

20. With respect to adult immigrants, CAIR Coalition will incur significant expenditures of funds and staff time due to the Interim Rule and Proclamation.

21. CAIR Coalition also would expend more resources to prepare each non-POE adult asylum seeker for his or her credible fear interview. During the approximately 1,500 intake sessions for detained adults that CAIR Coalition conducts each year, a staff member traditionally spent about five to ten minutes with each adult eligible for such an interview preparing him or her for the credible fear interview.

22. Following the Interim Rule and Proclamation, however, CAIR Coalition estimates that its staff would need to spend about double that time (ten to twenty minutes), at least, preparing non-POE adult asylum seekers for interviews. Under U.S. Citizenship and Immigration Services ("USCIS") guidance for the Interim Rule and Proclamation, non-POE asylum seekers effectively would need to meet the higher "reasonable fear" standard rather than the traditional "credible fear" standard to obtain relief. To prevail in a reasonable fear interview, an individual must show effectively at least a 51% chance—i.e., that they "more likely than not"—will be persecuted or tortured in their country of origin. In contrast, in a credible fear interview, an individual must show an approximately 10% chance—i.e., that they have a "well-founded fear"—of persecution or torture in their country of origin.

23. As a result of the heightened reasonable fear standard, each preparation session for a non-POE adult asylum seeker would take longer, whether to elicit and prepare more facts to satisfy the higher standard or related to follow-up interviews. It is much more difficult for migrants to receive a positive determination in a reasonable fear interview. It is our experience at CAIR Coalition that the heightened standard significantly alters the ability of immigrants to receive a positive outcome from an interview. During 2018, roughly 13% of credible fear interviews CAIR Coalition was involved with received a negative determination. Conversely, during the same time period 38% reasonable fear interviews CAIR Coalition was involved with received a negative determination—a three-fold increase.

24. The Interim Rule and Proclamation would cut in half the number of adults CAIR Coalition can prepare during each jail visit. CAIR Coalition cannot compensate for this loss; it has finite resources and permission to make jail visits only a few times a month.

25. CAIR Coalition's staff would spend more resources during credible fear interviews for adult non-POE asylum seekers, too. For about eight years, CAIR Coalition has had a Memorandum of Understanding with U.S. Citizenship and Immigration Services ("USCIS") permitting CAIR Coalition's staff and volunteer attorneys to attend credible fear interviews with clients. Prior to the Interim Rule and Proclamation, CAIR Coalition stopped sending staff and volunteers to attend credible fear interviews in person, because the vast majority of clients received positive determinations. Rather than spending limited staff and volunteer time attending interviews with clients who would be successful anyway, CAIR Coalition staff would review the transcripts from interviews with negative determinations to advise on further proceedings.

26. Now that the interviews will apply the higher reasonable fear standard under the Interim Rule and Proclamation, however, it is crucial that CAIR Coalition send staff and volunteer attorneys to as many interviews as possible to increase the likelihood that the person will pass. If CAIR Coalition staff members are busy attending these interviews, they would be unable to assist as many clients in trial proceedings under Section 240 of the Immigration and Nationality Act ("INA") as is typical.

27. Given the increased burden of proof that would be required at interviews, CAIR Coalition also anticipates that it would not be able to staff interviews with legal assistants or law student volunteers, as it sometimes had in the past.

28. CAIR Coalition also would need to recreate its now-defunct volunteer program for attending credible fear interviews as a result of the higher standard under the Interim Rule and Proclamation. This program would require a dedicated staff member—either a new hire or a staff member reallocated from another already understaffed program—to recruit and train

volunteer lawyers to sit in on credible fear interviews. CAIR Coalition already has discussed hiring another attorney or legal assistant to manage this program.

29. The heightened need for volunteer lawyers would have a ripple effect on the rest of CAIR Coalition's programs. When volunteer attorneys are used for credible fear interviews, they would have less time available to volunteer for trial stage proceedings under INA Section 240 or perhaps would not be in a position to volunteer for that subsequent representation at all. Because CAIR Coalition's organizational model relies on volunteer lawyers to represent clients in those trial stage proceedings, reduced volunteer capacity overall naturally reduces CAIR Coalition's capacity to represent as many clients as possible.

30. Reduced volunteer capacity also would divert resources from other of CAIR Coalition's initiatives, such as providing translations or conducting country conditions research.

31. The Interim Rule and Proclamation also would force CAIR Coalition to spend more time and resources on each child client, because all child cases would be time- and resource-intensive trial cases.

32. Children do not undergo credible fear interviews. Prior to the Interim Rule and Proclamation, children would undergo proceedings at the USCIS Asylum Office. These proceedings are conducted as interviews with an asylum officer and are less adversarial than a full trail with an immigration judge. The interviews are not attended by counsel for DHS or the Department of Health and Human Services (which oversees ORR) advocating against the child, as occurs in immigration court trials. There is also no direct or cross examination in asylum office interviews and no third-party witnesses. As such, asylum interviews for children require significantly less preparation time of CAIR Coalition staff than a hearing in front of an immigration judge in immigration court.

33. The Interim Rule and Proclamation, however, prevents non-POE asylum seekers, including children, from obtaining asylum. There thus would be nothing for the Asylum Office to adjudicate; the case would move directly to trial at immigration court. The Asylum Office does not have jurisdiction to grant a child (or any person), relief from removal in the form of Withholding of Removal under the INA or protection under the Convention against Torture.

34. For each fear-based case of a child that CAIR Coalition works on, staff will need to now spend considerable hours preparing for a trial rather than an interview. Further, CAIR Coalition's staff members who work with unaccompanied minors would have less time to work on each child case, as the docket for detained children moves much faster than the timeframe at the Asylum Office.

35. CAIR Coalition must spend more time and resources on cases for mothers and their children as well. Each year, CAIR Coalition serves roughly 20 to 30 young mothers and their immigrant children who live in shelters. Many of these mothers would be found ineligible for asylum under the new Interim Rule and Proclamation, such that their children can no longer be counted as derivatives within a single asylum application. CAIR Coalition anticipates that it now would have to divert additional resources to preparing separate cases for each family member given the absence of derivative asylum eligibility, significantly increasing the total time that must be spent on each client family's case.

36. At the trial stage, CAIR Coalition's staff also would spend added time and resources on each non-POE asylum seeker case to brief eligibility issues.

37. The Interim Rule and Proclamation also will jeopardize CAIR Coalition's already tight budget. If the organization places fewer asylum cases with volunteers at law firms, it is likely to receive fewer of the much-needed firm donations upon which it depends on for close to

12% of its annual budget. Much of CAIR Coalition's funding from law firm donations also is targeted to work on asylum cases; to the extent many clients are no longer eligible for asylum, CAIR Coalition expects that such donations could decrease.

38. Moreover, some of CAIR Coalition's funding is tied to the number of adult clients that the organization serves each year. At the Caroline County detention center, for example, CAIR Coalition receives funding to provide adults with jail visit services and immigration court representations. This funding is from an anonymous foundation that provides funding to serve a targeted number of detained adults each year. The more hours that each asylum seeker is going to require will reduce the overall numbers of people served, putting future funding in jeopardy. Indeed, because the Interim Rule and Proclamation reduce the number of clients CAIR Coalition can serve in trial proceedings, it is unclear whether CAIR Coalition would be able to comply with its existing funding conditions tied to numbers of trial representations.

39. In sum, the Interim Rule and Proclamation would irreparably harm CAIR Coalition, including by frustrating its fundamental organizational mission to serve as many detained noncitizens as possible. CAIR Coalition would be unable to represent the same number of clients that it has traditionally, both because fewer clients would be eligible for asylum relief and because the organization would have to spend more of its limited resources on each individual case. The Interim Rule and Proclamation also would force CAIR Coalition to divert scarce resources away from other important programs to compensate for the additional time, procedures, and staff required to continue serving clients under the Interim Rule and Proclamation.

40. The Interim Rule's lack of notice and comment procedures also irreparably compromised CAIR Coalition's ability to inform the Government of the substantial and

irreparable harms—both to the organization and its clients—that the policy would create. Commenting on rules and regulations is an integral part of CAIR Coalition's mission to improve the lives of migrants in the Washington, D.C. area. Had CAIR Coalition been given the opportunity to comment on the Interim Rule, it would have done so.

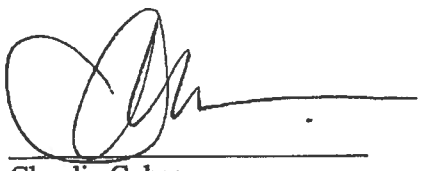
41. The relief requested in Plaintiffs' Complaint would properly address the injuries to CAIR Coalition as described above. If Plaintiffs prevail in this action, CAIR Coalition would be able to devote its staff time and resources to more clients than if the Interim Rule and Proclamation were in effect.

42. CAIR Coalition has no plain, adequate, or complete remedy at law. It would suffer immediate and irreparable injury under the Proclamation and Interim Rule, if not enjoined.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: December 3, 2018

Washington, D.C.



Claudia Cubas

Exhibit 4

DECLARATION OF MICHELLE GARZA PAREJA

I, Michelle Garza Pareja, declare under penalty of perjury as prescribed in 28 U.S.C. § 1746:

1. The facts contained in this declaration are known personally to me and, if called as a witness, I could and would testify competently thereto under oath. I submit this sworn declaration in support of Plaintiffs' Motion for Temporary Restraining Order.

2. I serve as the Chief Legal Programs Officer for Refugee and Immigrant Center for Education and Legal Services ("RAICES"), an organizational plaintiff in this action. I have been licensed in the State of Texas since 2010 and have worked at RAICES since that time, first as a staff attorney, then program director, then Associate Executive Director, and currently as Chief Legal Programs Officer. I manage all administrative and programmatic aspects of the legal programs and its staff of approximately 51 attorneys.

3. RAICES is a 501(c)(3) nonprofit organization headquartered in San Antonio, Texas.

4. Founded in 1986 as the Refugee Aid Project by community activists in South Texas, RAICES has grown to be the largest immigration legal services provider in Texas, with offices in Austin, Corpus Christi, Dallas, Fort Worth, Houston, and San Antonio. RAICES's mission is to promote justice by providing free and low-cost legal services to underserved migrant children, families, and refugees in Texas. RAICES has three main programs: Family Detention Services, the Children's Program, and Community Immigration Services. In 2017, RAICES staff closed approximately 51,000 cases at no cost to the client.

5. The vast majority of RAICES's clients seek asylum after entering the country without inspection along the southern border, not at a designated port of entry ("non-POE asylum seekers"). Since January 1, 2018, approximately 70% of the detained migrant families,

and 50% of the detained unaccompanied minors served by RAICES were non-POE asylum seekers. Honduras, Guatemala, and El Salvador are the primary countries of origin for the non-POE asylum seekers whom RAICES serves.

6. The Interim Rule challenged in the Complaint, *see Aliens Subject to a Bar on Entry under Certain Presidential Proclamations; Procedures for Protection* Claims, 83 Fed. Reg. 55,934 (Nov. 9, 2018), and the "Presidential Proclamation Addressing Mass Migration Through the Southern Border of the United States" (Nov. 9, 2018), *available at* https://goo.gl/tXz6xs ("the Proclamation"), would irreparably harm RAICES in multiple ways absent enjoinder of the Interim Rule, including by frustrating RAICES's mission to serve as many migrant clients as possible. RAICES would be unable to represent the same number of clients that it does currently, both because fewer clients would be eligible for relief and because RAICES would spend more resources on each individual case. The Interim Rule and Proclamation would also force RAICES to divert scarce resources away from other important programs to compensate for the additional time, procedures, and staff required to continue serving clients under the policy.

7. At the Karnes County Residential Center in Texas ("Karnes"), RAICES's Family Detention Services program has a commitment to universal representation through all aspects of the immigration process during detention. The program conducts intake sessions for each detainee and accompanies most detainees to their credible fear interviews. Additionally, the program represents detainees in appealing negative decisions from their credible fear interviews.

8. Family Detention Services would need to radically change its entire program because of the Interim Rule and Proclamation.

9. The Interim Rule and Proclamation would fundamentally affect Family Detention Services' intake procedures at each of the detention centers. Currently, the intake process is relatively short. A form records how, when, and where each client entered the United States; biographical information; how long the client was with U.S. Customs and Border Patrol; and when the client was transferred to the detention facility. Since January 1, 2018, Family Detention Services has conducted intakes of approximately 3,500 families at Karnes (i.e., intakes of at least 7,000 people).

10. Under the Interim Rule and Proclamation, however, RAICES staff would need to conduct in-depth questioning of each client at the intake stage to determine eligibility for asylum under the Interim Rule and Proclamation, or eligibility for withholding of removal or relief under the Convention Against Torture ("CAT") in the alternative. In particular, RAICES would need to determine whether the client attempted to enter through a port of entry and whether he or she is likely to meet the higher legal standards applicable to withholding of removal and CAT claims. This intake process would be more extensive and time-consuming for staff than the form-based intake RAICES traditionally used.

11. The Interim Rule and Proclamation also would require Family Detention Services to create an entirely new process for assisting non-POE asylum seekers with their credible fear interviews.

12. Currently, Family Detention Services assists most detainees at Karnes with their credible fear interviews. Since January 1, 2018, approximately 2,700 families underwent credible fear interviews.

13. RAICES staff typically represent detainees at unique or especially difficult initial interviews, however in June 2018 we have attempted to represent at every interview, either

through RAICES staff or volunteers including pro bono attorneys and law students. Since June 2018, RAICES staff represented at approximately 40 interviews, while volunteers represented at approximately 359 interviews; we estimate that in this time period a total of 500 interviews took place.

14. The Interim Rule and Proclamation would force Family Detention Services to create a dual-track system to prepare their clients for interviews: one for clients who entered at ports of entry or before the effective date of the Interim Rule and Proclamation—i.e., using the traditional preparation methods—and another entirely new system for non-POE asylum seekers. This new system would be much more time- and resource-intensive.

15. Under U.S. Citizenship and Immigration Services ("USCIS") guidance for the Interim Rule and Proclamation, non-POE asylum seekers effectively would need to meet the higher "reasonable fear" standard rather than the traditional "credible fear" standard to obtain relief. To prevail in a reasonable fear interview, an individual must show effectively at least a 51% chance—i.e., that they "more likely than not"—will be persecuted or tortured in their country of origin. In contrast, in a credible fear interview, an individual must show an approximately 10% chance—i.e., that they have a "well-founded fear"—of persecution or torture in their country of origin.

16. It is much more difficult for migrants to receive a positive determination in a reasonable fear interview. Since January 1, 2018, only about 65% of our clients in reasonable fear interviews received positive determinations, compared to 95% for clients in credible fear interviews.

17. This shift to reasonable fear interviews would be a significant one for Family Detention Services. The program's staff would spend double or triple the time interviewing and

preparing each client to meet the higher reasonable fear standard. Due to the higher stakes, more staff would need to attend interviews, rather than relying on volunteers. The staff themselves would need to spend more time preparing for each interview, as there is a higher likelihood that they would need to make legal arguments during the interview, and conduct legal research prior to the interview. For the pro bono attorneys that still could attend, Family Detention Services would need to create new training resources on how to make legal arguments that were rarely necessary during previous credible fear interviews.

18. Unlike under the credible fear standard, the higher reasonable fear standard would require Family Detention Services to prepare each child for an interview. It is far more likely that a child will be required to testify in a reasonable fear rather than a credible fear interview. Thus, Family Detention Services would have to sit down with every child in the family to explain the process and prepare them for questioning. This generally at least doubles—with a corresponding increase depending on the size of the family—the time to prepare each family for their interviews.

19. As a result of the Interim Rule and Proclamation, Family Detention Services would no longer be able to fulfill its goal of assisting each client to prepare for an interview. The program would need to prioritize representation at fear interviews for non-POE asylum seekers—about 70% of all interviews. Family Detention Services might not be able to provide any assistance at credible fear interviews for asylum seekers who entered through a port of entry or who entered prior to the effective date of the policy.

20. Family Detention Services also would struggle under the weight of increased appeals under the Interim Rule and Proclamation. Currently, negative determinations from credible fear interviews are rare. Last year, Family Detention Services appealed 177 negative

fear determinations (less than 1% of all interviews) to an Immigration Judge. These appeals are time-consuming for staff, because they must prepare the client to testify, draft affidavits, gather evidence and country conditions documents, research legal arguments, prepare court filings, and represent at court hearings which are often scheduled with only a few days' notice.

21. With the higher reasonable fear standard, however, more clients with meritorious claims would receive negative determinations to be appealed. If many more clients must go before an Immigration Judge, Family Detention Services could not continue to represent them all. The program must narrow its case acceptance criteria as the volume of appeals increases. This would further undermine Family Detention Services' commitment to universal representation.

22. Nor could Family Detention Services rely on pro bono attorneys to represent clients in immigration court; unlike with telephonic credible fear interviews, few pro bono attorneys are available to represent clients in person at immigration court, especially in rural Texas.

23. The Interim Rule and Proclamation also create new burdens for RAICES's Children's Program.

24. Unaccompanied minors bypass the credible fear interview process and are placed directly in removal proceedings. Under the Trafficking Victims Protection Reauthorization Act, removal proceedings for unaccompanied minors have the opportunity to apply for asylum first at the Asylum Office, rather than in immigration court. The process is designed to be non-adversarial to protect these vulnerable children. Last year, the Children's Program represented 85 unaccompanied minors at the Asylum Office.

25. Under the Interim Rule and Proclamation, however, unaccompanied minors who enter outside of a port of entry would no longer be eligible for asylum. The Asylum Office would have no jurisdiction over the case; an Immigration Judge would hear the case for withholding of removal and protection under CAT.

26. What has been a non-adversarial process using minimal resources would become a lengthy and costly process for the Children's Program staff under the Interim Rule and Proclamation. Staff would have to prepare formal briefings and sophisticated legal arguments for the Immigration Judge, both of which are uncommon for proceedings before an Asylum Officer.

27. The adversarial process in immigration court is also a traumatic one for the children. Rather than tell their story to an Asylum Officer in an office, children would have to testify in court and be cross-examined by a U.S. Department of Homeland Security attorney. Children's Program staff would expend tremendous time and resources preparing the children not only for the contents of their testimony, but also for the emotional toll that testimony would take. All of this is much less likely to occur absent the Interim Rule and Proclamation.

28. The Interim Rule and Proclamation would add new obstacles for RAICES's Community Immigration Services program as well.

29. Community Immigration Services represents clients after they have been released from detention. The program's lawyers represent asylum seekers before USCIS and the immigration courts, but also provide pro se services including assistance in completing asylum applications and translation of documents. Last year, Community Immigration Services worked with approximately 100 asylum-seeking clients outside detention. Staff assisted with roughly 75 applications.

30. Under the Interim Rule and Proclamation, Community Immigration Services would spend at least double the traditional time on each family's applications. If the family could not apply for asylum, spouses and children would not be considered derivatives on the primary applicant's application. That is, each individual would have to submit a separate application, rather than one application per family. It would take significantly more time and resources for Community Immigration Services lawyers to assist families with their applications than before the policy. RAICES anticipates that Community Immigration Services would need to assist with approximately 75-100 additional applications—at least double its current number—under the Interim Rule and Proclamation.

31. Community Immigration Services staff may have to shift roles to other RAICES programs. If fewer clients are released from detention under the higher reasonable fear standard, there would be fewer clients in the community for Community Immigration Services lawyers to serve. Family Detention Services and the Children's Program, conversely, would be understaffed due to the increased burdens created by the Interim Rule and Proclamation. RAICES would need to retrain Community Immigration Services staff to perform unfamiliar duties for other programs.

32. In sum, the Interim Rule and Proclamation would irreparably harm RAICES, including by frustrating its fundamental organizational mission to serve as many detained migrants as possible. The Interim Rule and Proclamation would significantly frustrate RAICES's purpose of providing free and low-cost legal services to underserved migrant children, families, and refugees in Texas. Under the Interim Rule and Proclamation, RAICES would need to divert scarce resources—including staff time—to: (1) creating new intake procedures for detained families; (2) preparing non-POE asylum seekers for more onerous

reasonable fear interviews; (3) preparing children of non-POE asylum seekers for reasonable fear interviews, which is generally unnecessary under the credible fear standard; (4) appealing more negative determinations to immigration court and beyond; (5) preparing unaccompanied minors to testify and be cross-examined in immigration court, rather than at the non-adversarial Asylum Office; (6) assisting families to prepare multiple applications for relief, instead of one application with derivative family members; (7) creating new resources and policies to implement these changes; (8) training staff on these new policies; and (9) retraining staff from certain programs to move into new roles to implement these policies.

33. If the Interim Rule and Proclamation were to go into effect, RAICES would be able to serve fewer clients. For Family Detention Services, the increased time preparing non-POE asylum seekers for reasonable fear interviews and appealing their negative determinations to the Immigration Court would make it impossible to serve the number of clients that the program currently serves. The program would need to reduce the services it provides to all detained clients, including those who crossed at a port of entry.

34. As a result, RAICES would not be able to keep its commitment to universal representation at Karnes. This would be a significant blow to RAICES's mission.

35. The Children's Program also would serve fewer clients under the Interim Rule and Proclamation. Because children would need to testify and be cross-examined in immigration court rather than undergo a non-adversarial process at the Asylum Office, the Children's Program staff would need to expend more time and resources on each case, in turn reducing the number of children they can represent. The Children's Program's reduced capacity would frustrate its entire mission—to represent unaccompanied minors in immigration proceedings.

36. Community Immigration Services also would face severe difficulties under the Interim Rule and Proclamation. Staff would have to spend double the time filling out applications for non-derivative family members. And some staff would likely have to be re-assigned and re-trained to serve other roles, given that fewer clients would be released from detention.

37. The Interim Rule's lack of notice and comment procedures also irreparably compromised RAICES's ability to inform the Government of the substantial harms—both to the organization and its clients—that the policy would create. Commenting on rules and regulations is an integral part of RAICES's mission to improve the lives of migrants in Texas. In 2018, RAICES has commented on four proposed rules and regulations. Had RAICES been given the opportunity to comment on the Interim Rule, it would have done so.

38. The relief requested in the Complaint would properly address the injuries to RAICES as described above. If Plaintiffs prevail in this action, RAICES will be able to devote its staff time and resources to all its clients, not just a select few.

39. RAICES has no plain, adequate, or complete remedy at law. It would suffer immediate and irreparable injury under the Proclamation and Interim Rule, if not enjoined.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: December 3, 2018

Dallas, Texas

Michelle Garza Pareja

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

S.M.S.R., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Civil Action No. _____

[PROPOSED] TEMPORARY RESTRAINING ORDER

This matter came before the Court on Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (the "Motion"). Having considered the Motion and the documents filed therewith, including supporting declarations, Plaintiffs' Complaint, and the files and records herein, and good cause appearing therefor, the Court hereby finds and concludes as follows.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

To obtain a temporary restraining order, Plaintiffs must establish: (1) that irreparable harm is likely in the absence of preliminary relief, (2) a likelihood of success on the merits, (3) that the balance of the equities tips in Plaintiffs' favor, and (4) that an injunction is in the public interest. *See Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Based on the record before the Court, Plaintiffs will face immediate and irreparable injuries as a result of the implementation and enforcement of the regulation issued by the Acting Attorney General and Secretary of Homeland Security on November 8, 2018, entitled *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims*. 83 Fed. Reg. 55,934 (Nov. 9, 2018) (the "Rule"). Absent an injunction, the Rule,

implemented in connection with the President's "Proclamation Addressing Mass Migration Through the Southern Border of the United States," 83 Fed. Reg. 57,661 (Nov. 9, 2018) (the "Proclamation"), will deprive Plaintiffs S.M.S.R. and R.S.P.S. and the putative class members of the opportunity to seek asylum consistent with the laws of the United States. The Rule also places them at imminent risk of deportation to countries in which they may face persecution and violence. In addition, implementation of the Rule will substantially compromise the missions and resources of Plaintiffs Capital Area Immigrants' Rights Coalition ("CAIR Coalition") and Refugee and Immigrant Center for Education and Legal Services, Inc. ("RAICES"). Further, Defendants' promulgation of the Rule without employing the notice and comment procedures required under the Administrative Procedure Act, 5 U.S.C. § 553, deprived CAIR Coalition and RAICES of the ability to file comments opposing the policy. Each of the foregoing harms is significant and irreparable.

It is likely that Plaintiffs will prevail on the merits of the claims set forth in their Complaint. A temporary restraining order against Defendants, in the manner set forth below, is necessary until a determination of the merits of Plaintiffs' claims may be held.

The balance of the equities and the public interest also favor the relief sought by Plaintiffs. In particular, the issuance of a temporary restraining order will not cause substantial harm to Defendants and will maintain the status quo pending resolution of the merits of this case.

The Court further finds that Plaintiffs took reasonable steps to provide sufficient notice to Defendants as to their intention to file the instant motion by telephone and email correspondence dated December 3, 2018, the substance of which was relayed to the Court on the same date in Plaintiffs' Certificate of Counsel Regarding Compliance with Local Rule 65.1. Plaintiffs' efforts

to contact Defendants reasonably and substantially complied with the requirements of Federal Rule of Civil Procedure 65(b).

The Court continues to have jurisdiction over Defendants and the subject matter of this case.

No security bond is required under Federal Rule of Civil Procedure 65(c).

TEMPORARY RESTRAINING ORDER

Now, therefore, Plaintiffs' Motion is GRANTED, and it is hereby ORDERED that:

1. Defendants and all of their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them, are hereby enjoined fully from enforcing or implementing the Rule across the nation. Enforcement or implementation of the Rule at all United States borders, ports of entry, and in the processing of asylum claims is prohibited, pending further order of this Court.

2. Defendants shall immediately provide a copy of this Temporary Restraining Order to any persons or entity that may be subject to it, including Defendants' officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them or who have any involvement in the removal of individuals from the United States.

3. Pursuant to Federal Rule of Civil Procedure 65(b)(2), the Court sets an expedited hearing for _____ to determine whether this Temporary Restraining Order should be extended.

Date: _____

_____
United States District Judge